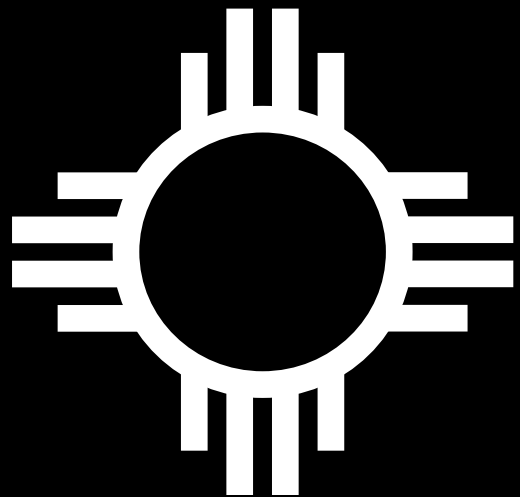


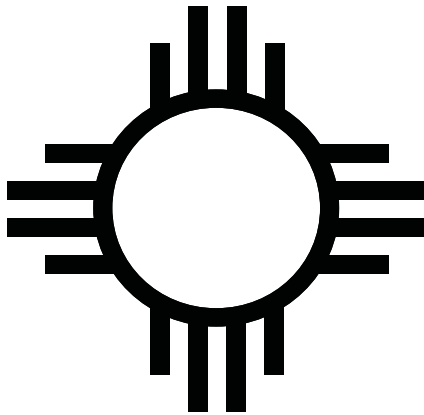
**NEW
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REGISTER**



Volume XXV
Issue Number 14
July 31, 2014

New Mexico Register

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July 31, 2014



The official publication for all notices of rulemaking and filings of adopted, proposed and emergency rules in New Mexico

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2014

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New Mexico Register

Volume XXV, Number 14

July 31, 2014

Table of Contents

Notices of Rulemaking and Proposed Rules

Human Services Department

Income Support Division

Notice of Public Hearing 351

Medical Assistance Division

Notice of Public Hearing 351

Transportation, Department of

Notice of Public Hearing 351

Workers Compensation Administration

Notice of Public Hearing 352

Adopted Rules

Effective Date and Validity of Rule Filings

Rules published in this issue of the New Mexico Register are effective on the publication date of this issue unless otherwise specified. “No rule shall be valid or enforceable until it is filed with the records center and published in the New Mexico Register as provided by the State Rules Act. Unless a later date is otherwise provided by law, the effective date of a rule shall be the date of publication in the New Mexico Register.” Section 14-4-5 NMSA 1978.

A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

Finance and Administration, Department of

2.61.3 NMAC A Dedication of a Portion of the State’s Gross Receipts Tax Increment 353

Human Services Department

Medical Assistance Division

8.312.2 NMAC R Nursing Facilities 358

8.350.2 NMAC R Reconsideration of Utilization Review Decisions..... 358

8.354.2 NMAC R PASRR and Patient Status Hearings 358

8.312.2 NMAC N Nursing Facilities 358

8.350.2 NMAC N Reconsideration of Utilization Review Decisions..... 363

8.354.2 NMAC N PASRR and Patient Status Hearings 365

8.308.12 NMAC A Managed Care Program - Community Benefit 371

Superintendent of Insurance, Office of

13.14.1 NMAC A General Provisions 383

13.14.3 NMAC A Agency Agreements 383

13.14.5 NMAC A Commitments or Binders 384

13.14.6 NMAC A Owner’s, Leasehold Owner’s, and Contract Purchasers Policies..... 385

13.14.7 NMAC A Loan, Leasehold Loan, and Construction Loan Policies..... 385

13.14.8 NMAC A Endorsements 386

13.14.10 NMAC A Endorsement Rates 387

13.14.17 NMAC A Underwriter’s Statistical Report..... 390

13.14.18 NMAC A Forms 395

Other Material Related to Administrative Law

Human Services Department

Low Income Home Energy Assistance Program Notice of Public Hearing.....	474
--	-----

Water Quality Control Commission

Notice of Scheduling Order and Procedural Order for the Triennial Review of Surface Water Quality Standards by the Water Quality Control Commission (English & Spanish)	475
---	-----

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Notices of Rulemaking and Proposed Rules

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

NOTICE OF PUBLIC HEARING

The New Mexico Human Services Department (HSD) will hold a public hearing to consider proposed rules to the Supplemental Nutrition Assistance Program (SNAP). The hearing will be held on Friday, August 29, from 9:00 to 10:00 a.m. at the Income Support Division (ISD) conference room, 2009 S. Pacheco Street, Santa Fe, New Mexico (NM). The conference room is located in Room 120 on the lower level of Pollon Plaza.

In Federal Fiscal Year 2015, HSD is proposing to implement a mandatory SNAP Employment & Training (E&T) program for non-exempt childless adults and non-exempt Non-Able Bodied Adults Without Dependents (Non-ABAWDs). Those individuals who are mandatory will be annually required to complete an individual or group job search, community services or a work experience placement to meet the E&T work program requirements. A mandatory E&T work program will ensure SNAP program participants have the skills, training or work experience to obtain and/or keep employment.

The Human Services Register Vol. 37 No. 50 outlining the proposed regulations is available on the HSD's website at: <http://www.hsd.state.nm.us/LookingForInformation/income-support-division-registers.aspx>. Individuals wishing to testify or to request a copy of the proposed regulation should contact the Income Support Division, P.O. Box 2348, Pollon Plaza, Santa Fe, NM 87504-2348, or by calling 505-827-7250.

If you are a person with a disability and you require this information in an alternative format, or you require a special accommodation to participate in any HSD public hearing, program, or service, please contact NM Human Services Department toll free at 1-800-432-6217, in Santa Fe at 827-7250, or through the New Mexico Relay system, toll free at 1-800-659-8331. The Department requests at least a 10-day advance notice to provide requested alternative formats and special accommodations

Individuals who do not wish to attend the hearing may submit written or recorded comments. Written or recorded comments

must be received by 5:00 P.M. on the date of the hearing, Friday, August 29th, 2014. Please send comments to:

Sidonie Squier, Secretary
Human Services Department
P.O. Box 2348, Pollon Plaza
Santa Fe, NM 87504-2348

You may send comments electronically to:
DebraD.Hendricks@state.nm.us

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

The Human Services Department (the Department), Medical Assistance Division (MAD), is proposing to amend the following rules that are part of the New Mexico Administrative Code (NMAC): 8.302.2 *Billing for Medicaid Services*, 8.308.14 *Cost Sharing*, 8.309.4 *MAD Administrative Benefits and Limitation of Services*, 8.200.430 *Recipient Rights and Responsibilities*, and 8.243.600 *Working Disabled Individuals (WDI) Benefit Description*. The register for these proposed amendments to these rules will be available August 1, 2014 on the HSD web site at <http://www.hsd.state.nm.us/LookingForInformation/registers.aspx>. If you do not have Internet access, a copy of the proposed rules may be requested by contacting MAD at (505) 827-3118.

The Department's intent by amending these rules is to simplify the process the Department follows for cost sharing with Medical Assistance Programs eligible recipients. Specifically, the changes are:

1. Cost sharing for emergency department use will be removed for the Working Disabled Individuals (WDI) and Children's Health Insurance Program (CHIP) populations.
2. WDI copay for pharmacy will be lowered to \$3 from \$5.
3. Alternative Benefit Plan (ABP) copayments will be removed except for the non-emergent use of the emergency department and unnecessary use of a brand name drug. Non-emergent use of the emergency department will be set at \$8 regardless of the federal poverty level (FPL). Unnecessary use of brand name drug will be \$3.

A public hearing to receive testimony on these proposed rules will be held in the Rio Grande Conference Room, Toney Anaya Building, 2550 Cerrillos Road Santa Fe on Tuesday, September 2, 2014 at 1:30p.m. Mountain Daytime Time (MDT).

Interested parties may submit written comments directly to: Sidonie Squier, Secretary, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. Recorded comments may be left by calling (505) 827-3118. Electronic comments may be submitted to JenniferL.Chavez1@state.nm.us. Written, electronic and recorded comments will be given the same consideration as oral testimony made at the public hearing. All comments must be received no later than 5:00 p.m. MDT, September 2, 2014.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact MAD toll free at 1-888-997-2583 and ask for extension 7-3118. In Santa Fe call 827-3118. The Department's TDD system may be accessed toll-free at 1-800-659-8331 or in Santa Fe by calling 827-3184. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

Copies of all comments will be made available by the MAD upon request by providing copies directly to a requestor or by making them available on the MAD website or at a location within the county of the requestor.

NEW MEXICO DEPARTMENT OF TRANSPORTATION

THE NEW MEXICO DEPARTMENT OF TRANSPORTATION

NOTICE OF PUBLIC HEARING

The New Mexico Department of Transportation (NMDOT) will hold a public hearing for the purpose of receiving oral and written public comments on Rule Number 18.27.5 NMAC, Contractor Prequalification Rule. The purpose of the proposed rulemaking is to replace the current rule dated January 1, 2001.

Three hearings are scheduled as follows: one on Tuesday, September 9, 2014, from 1:30 p.m. to 4:00 p.m. at the San Juan County Commission

Chambers, 100 South Oliver Drive, Aztec New Mexico; another on Wednesday, September 10, 2014, from 1:30 p.m. to 4:00 p.m. at the New Mexico Department of Transportation, General Office, Training Room 1, located at 1120 Cerrillos Road, Santa Fe, New Mexico; and a final one on Thursday, September 11, 2014, from 1:30 p.m. to 4:00 p.m. at the New Mexico Department of Transportation, Solano Project Office, Conference Room, located at 750 North Solano Drive, Las Cruces, New Mexico. The hearings will be held before Armando Armendariz P.E., NMDOT State Construction Engineer. Interested persons unable to attend the hearings may also present their views by written statements submitted on or before Monday, October 13, 2014 to:

New Mexico Department
of Transportation
C/O Office of Inspector General
-Attention Prequalification Rule
P.O Box 1149
Santa Fe, N.M. 87504-1149
Telephone (505) 476-0917
E-mail geraldine.aguilar@state.nm.us

A copy of the proposed rule can be obtained by visiting <http://dot.state.nm.us/en/PSE.html#a>. A copy of the existing rule can be obtained by visiting <http://www.nmcpr.state.nm.us/nmac/parts/title18/18.027.0005.htm>. Any individual with a disability who is in need of an auxiliary aid or service to attend or participate in the hearing, or who needs copies of the proposed rule in an accessible form may contact Armando Armendariz P.E., via telephone at (505) 490-2740, or via e-mail at armando.armendariz@state.nm.us, or Geraldine Aguilar, via telephone at (505) 476-0917, or via e-mail at geraldine.aguilar@state.nm.us, at least ten (10) days before the respective hearing.

NEW MEXICO WORKERS' COMPENSATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Notice is hereby given that on Thursday, August 7, 2014, commencing at 1:30 p.m., the New Mexico Workers' Compensation Administration will conduct a public hearing on the changes to the WCA Rules, including Part 1, General Provisions, Part 4, Claims Resolution, and Part 5, Enforcement and Administrative Investigations.

The hearing will be conducted at the Workers' Compensation Administration, 2410 Centre Avenue S.E., Albuquerque,

NM. Copies of the proposed rule amendments will be available by July 17, 2014. You may obtain a copy of the proposed changes at the WCA website at: <http://www.workerscomp.state.nm.us/> or contact the WCA General Counsel Office at 841-6083 for a copy via e-mail. If you would like to receive a copy by mail, please submit a self-addressed, stamped envelope with your request.

Comments made in writing and at the public hearing will be taken into consideration. Written comments on the rule changes will be accepted until the close of business on August 18, 2014. Oral comments will be limited to five (5) minutes per speaker.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aide or service to attend or participate in the hearing or meetings, please contact the General Counsel Office at (505) 841-6083. Or you may inquire about assistance through the New Mexico relay network at 1-800-659-8331.

End of Notices and Proposed Rules Section

Adopted Rules

NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION

This is an amendment to 2.61.3 NMAC, Sections 3 and 7 through 10, effective July 31, 2014.

2.61.3.3 STATUTORY

AUTHORITY: Section 5-15-2 (A) NMSA 1978 states that the purpose of the Tax Increment for Development Act is to create a mechanism for providing gross receipts tax financing and property tax financing for public infrastructure for the purpose of supporting economic development and job creation. Section 5-15-15 (F) NMSA 1978 provides that the state board of finance, upon review of the applicable tax increment development plan, may find that dedication of a portion of the gross receipts tax increment for the purpose of securing gross receipts tax increment bonds is reasonable and in the best interest of the state and that the use of the state gross receipts tax is likely to stimulate the creation of jobs, economic opportunities and general revenue for the state through the addition of new businesses to the state and the expansion of existing businesses within the state. Section 5-15-15 (F) NMSA 1978 limits the dedication to not more than seventy-five percent (75%) of the gross receipts tax increment attributable to the imposition of the state gross receipts tax within the district. Section 5-15-25.2 NMSA 1978 states that the state board of finance may approve the revision of the base year used to determine a district's gross receipts tax increment once during the lifetime of the district, if the revised year is a calendar year that is completed, if no gross receipts tax increment bonds attributable to the district have been issued, if there is no unresolved objection to the revision by the developer or by a local government that has dedicated a tax increment to the district, and upon a finding that the revision is reasonable and in the best interest of the state.

[2.61.3.3 NMAC - N, 10/15/2008; A, 7/31/2014]

2.61.3.7 DEFINITIONS:

- A. "Act" means the Tax Increment for Development Act, NMSA 1978, Sections 5-15-1 through 5-15-28 (2006), as it may be amended.
- B. "Application" means the submittal by the district, or, if the district is not yet formed, the owners of at least fifty percent (50%) of real property

located within the boundaries of the area proposed for inclusion within the district, containing the information and materials required by this rule seeking a dedication by the board of a portion of the state's increment or approval of a revised base year.

C. "Base gross receipts taxes" means:

(1) the total amount of gross receipts taxes collected within a ~~tax-increment development~~ district, as estimated by the governing body that adopted a resolution to form that district, in consultation with the taxation and revenue department, in the calendar year preceding the formation of the ~~tax-increment development~~ district or, in the case of a district with a revised base year approved by the board, the calendar year approved by the board, when an area is added to an existing district, the amount of gross receipts taxes collected in the calendar year preceding the effective date of the modification of the tax increment development plan and designated by the governing body to be available as part of the gross receipts tax increment; and

(2) any amount of gross receipts taxes that would have been collected in such year if any applicable additional gross receipts taxes imposed after that year had been imposed in that year.

D. "Board" means the state board of finance.

E. "Bonds" means the gross receipts tax increment bonds for which a portion of the state's increment is to be pledged.

~~[F.] "District" means a tax-increment development district formed pursuant to the act.]~~

F. "Developer" means the owner or developer who has entered into an agreement pursuant to subsection A of section 5-15-4 NMSA 1978 with the governing body that formed a district or the owner's or developer's successors or assigns.

G. "Direct job" or "direct effect" means employment, economic output and personal income attributable to economic activity within the boundaries of a district. A direct job may include an economic base job, an indirect job or an induced job if these jobs or this economic activity occurs within the boundaries of a district.

H. "District" means a tax increment development district formed pursuant to the act for the purposes of carrying out projects.

~~[H.]~~ I. "District board" means

a board formed in accordance with the provisions of the act to govern a district.

~~[I.]~~ J. "Economic base job" means employment within the district with an employer engaged primarily in creating goods and services that are exported out of the state.

~~[J.]~~ K. "Economic output" means the contribution to gross domestic product by state as measured by the bureau of economic analysis of the U.S. department of commerce. At a minimum, economic output is the sum of wages and salaries paid to workers in the district, profits of firms engaged in economic activity in the district, and interest and dividends paid to investors on loans and investments in the district.

~~[K.]~~ L. "Governing body" means the city council or city commission of a city, the board of trustees or council of a town or village or the board of county commissioners of a county.

~~[L.]~~ M. "Gross receipts tax increment" means the gross receipts taxes collected within a district in excess of the base gross receipts taxes collected for the duration of the existence of a district and distributed to the district in the same manner as distributions are made under the provisions of the Tax Administration Act [7-1-1 NMSA 1978].

~~[M.]~~ N. "Improvement district" means a district composed of all or a portion of a district wherein a property tax has been imposed pursuant to the provisions of 3-33-2E NMSA 1978.

~~[N.]~~ O. "Indirect job" or "indirect effect" means employment, economic output and personal income attributable to economic activity of suppliers to economic base businesses located within the district. These indirect jobs or activity may be located within or outside the district.

~~[O.]~~ P. "Induced job" or "induced effect" means employment, economic output and personal income attributable to household spending by employees of all companies directly or indirectly affected by the project. These indirect jobs or [activity] effects may be located within or outside the district.

~~[P.]~~ Q. "Project" means a tax increment development project, which means activities undertaken within a tax increment development area to enhance the sustainability of the local, regional or statewide economy; to support the creation of jobs, schools and workforce housing; and to generate tax revenue for the provision of public improvements and may include:

(1) acquisition of land within a designated tax increment development

area or a portion of that tax increment development area;

(2) demolition and removal of buildings and improvements and installation, construction or reconstruction of streets, utilities, parks, playgrounds and improvements necessary to carry out the objectives of the act;

(3) installation, construction or reconstruction of streets, water utilities, sewer utilities, parks, playgrounds and other public improvements necessary to carry out the objectives of the act;

(4) disposition of property acquired or held by a district as part of the undertaking of a project at the fair market value of such property for uses in accordance with the act;

(5) payments for professional services contracts necessary to implement a tax increment development plan or project;

(6) borrowing to purchase land, buildings or infrastructure in an amount not to exceed the revenue stream that may be derived from the gross receipts tax increment or the property tax increment estimated to be received by a district; and

(7) grants for public improvements essential to the location or expansion of a business.

R. "Public improvements" means on-site improvements and off-site improvements that directly or indirectly benefit a district or facilitate development within a tax increment development area and that are dedicated to the governing body in which the district lies. Public improvements include:

(1) sanitary sewage systems, including collection, transport, treatment, dispersal, effluent use and discharge;

(2) drainage and flood control systems, including collection, transport, storage, treatment, dispersal, effluent use and discharge;

(3) water systems for domestic, commercial, office, hotel or motel, industrial, irrigation, municipal or fire protection purposes, including production, collection, storage, treatment, transport, delivery, connection and dispersal;

(4) highways, streets, roadways, bridges, crossing structures and parking facilities, including all areas for vehicular use for travel, ingress, egress and parking;

(5) trails and areas for pedestrian, equestrian, bicycle or other non-motor vehicle use for travel, ingress, egress and parking;

(6) pedestrian and transit facilities, parks, recreational facilities and open space areas for the use of members of the public for entertainment, assembly and recreation;

(7) landscaping, including earthworks, structures, plants, trees and related water delivery systems;

(8) public buildings, public safety facilities and fire protection and police facilities;

(9) electrical generation, transmission and distribution facilities;

(10) natural gas distribution facilities;

(11) lighting systems;

(12) cable or other telecommunications lines and related equipment;

(13) traffic control systems and devices, including signals, controls, markings and signage;

(14) school sites and facilities with the consent of the governing board of the public school district for which the facility is to be acquired, constructed or renovated;

(15) library and other public educational or cultural facilities;

(16) equipment, vehicles, furnishings and other personal property related to the items listed in this subsection;

(17) inspection, construction management, planning and program management and other professional services costs incidental to the project;

(18) workforce housing; and

(19) any other improvement that the governing body determines to be for the use or benefit of the public.

[Q.] S. "State's increment" means the state's portion of the gross receipts tax increment.

[R.] T. "Sustainable development" means land and other ~~developments that achieve~~ development that achieves sustainable economic and social goals in ways that can be supported for the long term by conserving resources, protecting the environment and ensuring human health and welfare using mixed-use, pedestrian-oriented, multimodal land use planning.

[S.] U. "Workforce housing" means decent, safe and sanitary dwellings, apartments, single-family dwellings or other living accommodations that are affordable for persons or families earning less than eighty percent (80%) of the median income within the county in which the [tax increment development] project is located; provided that an owner-occupied housing unit is affordable to a household if the expected sales price is reasonably anticipated to result in monthly housing costs that do not exceed thirty-three percent (33%) of the household's gross monthly income; provided that:

(1) determination of mortgage amounts and payments are to be based on down payment rates and interest rates generally available to lower- and moderate-income households; and

(2) a renter-occupied housing unit is affordable to a household if the

unit's monthly housing costs, including rent and basic utility and energy costs, do not exceed thirty-three percent (33%) of the household's gross monthly income. [2.61.3.7 NMAC - N, 10/15/2008; A, 7/31/2014]

2.61.3.8 BASES FOR DEDICATION OF A PORTION OF THE STATE'S INCREMENT AND REVISION OF BASE YEAR:

In determining whether it can make the findings required for dedication of [a portion] up to seventy-five percent (75%) of the state's increment and what percentage of the state's increment may be dedicated or for approval of the revision of a district's base year the board will:

A. evaluate whether the project can occur in substantially the same form if the state's increment is not obtained or, in the case of a request for approval of a revised base year, if the base year is not revised;

B. determine that the following additional criteria are met:

(1) the project is expected to have a positive net revenue impact on the state general fund over a period of time approximately equal to the life of the bonds when calculated as described in this rule;

(2) the project is expected to generate new jobs and economic opportunities;

(3) the project incorporates adequate planning and resource allocation for workforce housing and schools;

(4) the portion of the state's increment requested is reasonable and fully justified by the analysis; and

(5) the developer has a proven record for success with similar developments; and

C. consider these additional factors as part of the determination whether the use of the state's increment is [“e”] reasonable and in the best [interests] interest of the state [“r”]:

(1) the type of development (e.g. greenfield, revitalization, or within a recognized public policy priority);

(2) the anticipated increase in general fund tax revenue and employment within the district as a result of companies moving into the state (companies new to New Mexico);

(3) the anticipated increase in general fund tax revenue and employment within the district as a result of growth of firms currently doing business in New Mexico;

(4) the attributes of employment generated within the district, the nature of the industry, and benefits to the community and the state;

(5) the ratio of local government to state government contribution, expressed

both in terms of absolute dollars contributed toward infrastructure and in terms of the relative percentage of available gross receipts and property tax revenues dedicated to bond repayment;

(6) the impacts on surrounding or non-participating government entities;

(7) the ratio of private to public investment;

(8) the use of innovative planning and development techniques;

(9) the application of environmentally protective technologies, energy and water efficiencies and sustainable development elements in the project, including all residential, commercial, industrial and government structures;

(10) the maximum maturity of the bonds is reasonable and fully justified by the analysis;

(11) the availability of water and water rights to support the planned community;

(12) the proposed governance structure of the district, including the composition of the board and the method of selection; and

(13) the provision of community facilities, such as senior centers, and non traditional housing to address various social needs such as homelessness and domestic violence and other community benefits. [2.61.3.8 NMAC - N, 10/15/2008; A, 7/31/2014]

2.61.3.9 APPLICATION SUBMITTAL, PROCESSING, EVALUATION METHODOLOGY, AND EFFECTIVE DATE AND DURATION OF DEDICATION:

A. Contents of application.

A district requesting a dedication of a portion of the state's increment or the revision of its base year shall submit an application that includes:

(1) a conceptual site plan for the project;

(2) the tax increment development plan approved by the governing body that includes:

(a) a map depicting the geographical boundaries of the area proposed for inclusion within the district; this map should indicate any existing infrastructure and residential, commercial and industrial structures and development;

(b) the estimated time necessary to complete the [~~tax increment development~~] project;

(c) a description and the estimated cost of all public improvements proposed for the project;

(d) whether it is proposed to use gross receipts increment bonds or property tax increment bonds or both to finance all or part of the public improvements;

(e) the estimated annual gross receipts tax increment to be generated by the project and the portion of that gross receipts tax increment to be allocated during the time necessary to complete the payment of the project;

(f) the estimated annual property tax increment to be generated by the project and the portion of that property tax increment to be allocated during the time necessary to complete the payment of the project;

(g) the general proposed land uses for the project;

(h) the number of jobs [~~by type~~] expected to be created by the project classified at the three digit level of the most recent North American industry classification system (NAICS), and separated into full-time and part time jobs;

(i) the amount and characteristics of workforce housing expected to be created by the project;

(j) the location and characteristics of public school facilities expected to be created, improved, rehabilitated or constructed by the [~~tax increment development~~] project;

(k) a description of innovative planning techniques, including mixed-use transit-oriented development, traditional neighborhood design or sustainable development techniques, that are deemed by the governing body to be beneficial and that will be incorporated into the [~~tax increment development~~] project; and

(l) the amount and type of private investment in each [~~tax increment development~~] project;

(3) information on the availability of other public and private funds for the project, including:

(a) whether it is proposed to finance any portion of the infrastructure using the provisions of Section 5-15-13 NMSA 1978, which permits the property owners within a [~~tax increment development~~] district to impose a property tax rate of up to \$5 per \$1,000 of net taxable value for a period of up to four (4) years; and

(b) whether it is proposed to establish an improvement district and finance any portion of the infrastructure using the provisions of Sections 3-33-1 through -43 NMSA 1978, as [~~it~~] they may be amended, and whether the bonds sold through this mechanism conform to the limit of twenty-five percent (25%) of total property value established in Section 3-33-14 NMSA 1978;

(4) an economic development plan, including an industrial cluster analysis if appropriate, for attracting businesses to the district;

(5) market feasibility study that includes:

(a) the number of residential (single family and multi-family) units and the square footage of commercial, retail and industrial space to be built by calendar year;

(b) the average price per square foot or by unit by type;

(c) the market supply (or availability) and the value of each property type in the area and surrounding areas with reference to any other planned development in the surrounding areas; and

(d) market demand (or absorption rates) for each property type in the area and surrounding areas with reference to any other planned development in the surrounding areas;

(6) economic analysis to include:

(a) employment and salary projections by industry as classified at the three digit level of the most recent North American industry classification system (NAICS) in the district by calendar year, [~~and~~] whether the jobs are temporary (i.e., construction) or permanent employment, and whether the jobs are full-time or part-time;

(b) population projections by calendar year;

(c) housing unit projections and type by calendar year;

(d) economic output from direct and indirect impacts within the district with temporary construction activity listed separately; separate listing of economic base employment within the district, indirect and induced employment within the district and in surrounding areas is optional, but encouraged;

(e) the anticipated net revenue impact on the state general fund shall be calculated as follows:

(i) the sum of all general fund revenues generated by economic activity within the district by type of revenue (e.g. gross receipts tax from retail sales, gross receipts tax from services provided to New Mexico businesses, personal income tax, etc.) less: 1) the sum of all general fund costs to the state associated with the provision of services to individuals and businesses (e.g. public schools); 2) the estimated amount of tax incentives provided to promote economic development within the district under current law; 3) the amount of the state's increment requested by the district; and 4) the total amount of capital outlay appropriated for use in the district under current law;

(ii) the net revenue impact on the state general fund must be expressed in constant dollar terms; and

(iii) the net present value of general fund revenues less general fund costs over the life of the bonds shall be submitted; a discount rate equal to five percent (5%) shall be used in this

calculation;

(7) letter from governing body verifying its ability to pay for operations and maintenance of public infrastructure created by the district and provide basic services such as law enforcement and public health and safety within the district;

(8) a detailed timeline of project completion, including public infrastructure expenditures;

(9) a financing plan to include:

(a) information supporting why tax increment financing is needed;

(b) debt structure and terms, including maturity and estimated interest rates;

(c) pro-forma for all bonds to be issued for the project (including property tax increment bonds, if proposed); and

(d) projected coverage ratios for all bonds;

(10) developer information to include:

(a) organizational chart;

(b) experience in developing similar projects and utilizing tax increment financing;

(c) audited financial statements for the past three (3) years; and

(d) identify past and pending administrative actions and litigation in which the developer is involved that could impact the current financial viability of the developer; briefly describe the nature of the proceedings and current status or final result;

(11) any other information regarding the economic benefits to the project's community and to the state or which the district believes will aid the board in considering the request for the dedication;

(12) enacted resolution of governing body approving the plan;

(13) enacted resolution of governing body forming the district;

(14) enacted resolution of each governing body dedicating a portion of its share of the applicable tax increments;

(15) approved master development agreement with governing body; ~~and~~

(16) form of board resolution approving the dedication of a portion of the state's increment; ~~and~~

~~(17) in addition to the submission requirements above, for requests for the approval of a revised base year:~~

~~(a) a detailed project history including a summary of past appearances before the board, legislative efforts related to the project, and activity to date in the district;~~

~~(b) a written summary of the reasons why rebasing is requested and stating the revised base year requested; and~~

~~(c) a certification of the district~~

~~that the district's base year has never been revised and that no gross receipts tax increment bonds attributable to the district have been issued;~~

~~(d) tabular or verbal comparison of the information provided pursuant to paragraphs (2) through (6), (8) and (9) of this subsection at the time a revised base year is requested versus at the time the dedication of a portion of the state's increment was initially approved, with explanations of any substantive changes;~~

~~(e) a copy of the resolution adopted by the district declaring the district's intent to revise its base year;~~

~~(f) a copy of all comments on the intent to revise the base year received from the taxation and revenue department, the developer and the local governments that have dedicated a tax increment to the district; and~~

~~(g) any other related documentation.~~

B. Timeline and submittal requirements. Any application for dedication of a portion of the state's increment or approval of a revised base year shall be considered by the board at its regular meeting in December or July of each year. ~~[For consideration at the December 2008 meeting, a complete application must be submitted no later than August 30, 2008; thereafter, a complete]~~ Except as provided in this paragraph for applications for the approval of a revised base year, complete applications must be submitted no later than the preceding January 1 for consideration at the board's July meeting, or by July 1 for consideration at the board's December meeting. For applications for a revised base year, the submission requirements of Subsection A, Paragraph 17, subparagraphs (e), (f), and (g) must be received no more than forty-five days after a district's adoption of a resolution declaring the intent to revise its base year. All required materials must be submitted electronically and tables must be submitted as Microsoft ~~[excel]~~ Excel files with access to all data, including assumptions and formulae. If a district has not been formed by the submittal deadline, please submit all of the documents listed in Paragraphs (1) through (12) and (16) of Subsection A of 2.61.3.9 NMAC in the initial application, and provide Paragraphs (13), (14) and (15) of Subsection A within five (5) calendar days of adoption or twenty-one (21) calendar days prior to the meeting at which the board is to consider the application, whichever occurs first. If a governing body has not adopted a resolution pledging a portion of its gross receipts tax increment or its property tax increment or both by this deadline, that resolution shall be provided immediately upon its adoption and, if the adoption does not occur

prior to the meeting at which the board is to consider the application, the board may take any action it deems appropriate, such as imposing a condition requiring such dedication or deferring action until a dedication is made. In addition, the board may require informational presentations at [the] a meeting prior to the meeting at which the application is to be considered. Upon request, the board, in its discretion, may waive provision of any information otherwise required by this rule provided that the requesting party can demonstrate that other documents that are provided are equivalent to or satisfy the rationale for submitting the [item] information and that the state's interest will continue to be sufficiently protected.

(1) In addition to submitting an application to the board, additional copies of an application must be submitted to the department of finance and administration economic analysis unit, the New Mexico finance authority, the taxation and revenue department office of the secretary, and legislative finance committee staff at their respective offices. The board may require the submission of supplemental information during its review process. All information submitted pursuant to this rule will be publicly available.

(2) Prior to initiating the preparation of an application, a developer is encouraged to schedule a "pre-application" conference to discuss the project and proposed methodology with board staff and the economic analysis unit of the department of finance and administration.

(3) The board, in its discretion, may waive certain requirements included in the rule when the application demonstrates why it is in the best interest of the state to do so.

C. Staff methodology.

The board will evaluate the project as a whole and evaluate each district on a stand alone basis. The board will utilize the services of the department of finance and administration economic analysis unit and may seek the assistance of an independent economic consultant to evaluate each request. The district is encouraged to submit any additional data that may be helpful for use in this review. The department of finance and administration economic analysis unit or [the] any independent economic consultant will use the following methodology in evaluating each request:

(1) validation of any economic impact models using standard economic impact tools;

(2) determination of the viability of the project under the following scenarios:

(a) requested tax increment is approved;

(b) requested tax increment is not approved;

(c) some portion of the requested tax increment is approved or increment for less than all districts if multi-district project;

(d) under different assumptions about the relocation of existing businesses within New Mexico, and economic factors such as inflation and economic growth;

(3) evaluation of the project recognizing other economic development efforts by other economic development entities including other districts;

(4) assessment of impact on surrounding communities and non-participating governments;

(5) determination of the ratio of public to private capital contributions and the ratio of state contributions compared to local contributions; ~~and~~

(6) validation of the finance plan; the board will seek input from New Mexico finance authority staff regarding interest rates, coverage ratios and other bond financing features to ensure that they are reasonable and appropriate; and

(7) in the case of applications for approval of a revised base year, review of public comments received from the taxation and revenue department, the department of finance and administration, the developer and the local governments that have dedicated a tax increment to the district following the district's adoption of a resolution indicating the district's intent to revise its base year.

D. Board approval, effective date and duration.

(1) The board's approval of the dedication of a portion of the state's increment or of a revised base year shall be effective January 1 or July 1 following legislative and, if required, department of finance and administration approval of the bonds, whichever date next succeeds the last approval to be obtained.

(2) In the event legislative, and if required, department of finance and administration approval of bonds is not obtained within four (4) years from the date of the board's approval of the dedication of a portion of the state's increment the board's approval of the dedication shall expire unless the district requests and receives approval of an extension from the board prior to the expiration of the dedication. For dedications approved by the Board prior to July 15, 2010, an extension may be requested from the board on or before its December 2014 meeting. Any request for extension of dedication shall specify the requested extension period, include a description of efforts to receive legislative, and, if required, department of finance and administration approval of the bonds, and provide updated economic and financial information about the district and the project that is sufficient to allow the board to make a finding that approval of the

extension of dedication is in the best interest of the state.

(3) Any substantive change to the tax increment development plan after a dedication has been made must be reported to the board pursuant to Subsection E of 2.61.3.10 NMAC and will require board approval, without which the board's approval of the dedication shall expire.

(4) A dedication shall ~~terminate~~ expire upon full payment or early defeasance of the bonds in full. [2.61.3.9 NMAC - N, 10/15/2008; A, 7/31/2014]

2.61.3.10 REPORTING REQUIREMENTS:

A. Within fourteen (14) business days after a district issues any bonds, the district shall advise the board by letter of the date of issuance, the interest rate, and the total aggregate amount of each issue.

B. On or before June 1 of each year following the issuance of the bonds until bonds are fully defeased, a district that has received a dedication of a portion of the state's increment shall provide to the board employment reports, as available, setting forth in reasonable detail the numbers and types of jobs created within the district on a full-time equivalent basis during the preceding twelve (12) month period and the availability of workforce housing.

C. Within thirty (30) days of submitting any report or data required by the governing body, the New Mexico finance authority, the legislature, or any legislative committee, the district shall transmit copies of these reports or data to the board ~~[of finance]~~ and the economic analysis unit of the department of finance and administration.

~~[D. Within thirty (30) days of submitting any report or data required by the New Mexico finance authority, the legislature, or any legislative committee, the district shall transmit copies of these reports or data to the board of finance and the economic analysis unit of the department of finance.]~~

~~[E.]~~ D. [At the board's regularly scheduled meeting, each November] By November 1 of each year, a district that has [received a] an unexpired dedication of a portion of the state's gross receipts tax increment will submit a written report describing updates on the district, including but not limited to any changes to the plan that have occurred since board approval of the dedication of a portion of the state's increment, information on the infrastructure build-out, jobs created, employers, revenues and expenses, total debt outstanding, a status report of the district's achievements with respect to

public facilities and community benefits, such as the provision of schools and workforce housing in the district, and any other information the applicant believes may be useful for the board.

~~[F.]~~ E. A district must report any ~~[significant]~~ substantive changes to the plan to the board ~~[director]~~ that occur after the dedication of a portion of the state's increment.

~~[G.]~~ F. Subsections A through ~~[F]~~ E of 2.61.3.10 NMAC apply to all districts that have received the state's gross receipts tax increment since the adoption of the Tax Increment for Finance Act in 2006 until the district is dissolved or the board's approval of the increment has expired. [2.61.3.10 NMAC - N, 10/15/2008; A, 7/31/2014]

[Continued on page 358]

**NEW MEXICO HUMAN
SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION**

8.312.2 NMAC, Nursing Facilities, (filed 10/02/2012) repealed and replaced by 8.312.2 NMAC, Nursing Facilities, effective 08/01/2014.

8.350.2 NMAC, Reconsideration Of Utilization Review Decisions, (filed 12/1/2011) repealed and replaced by 8.350.2 NMAC, Reconsideration Of Utilization Review Decisions, effective 08/1/2014.

8.354.2 NMAC, PASRR and Patient Status Hearings, (filed 02/17/2012) repealed and replaced by 8.354.2 NMAC, PASRR and Patient Status Hearings, effective 08/1/2014.

**NEW MEXICO HUMAN
SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION**

**TITLE 8 SOCIAL SERVICES
CHAPTER 312 LONG TERM CARE
SERVICES - NURSING SERVICES
PART 2 NURSING
FACILITIES**

8.312.2.1 ISSUING AGENCY:
New Mexico Human Services Department (HSD).
[8.312.2.1 NMAC - Rp, 8.312.2.1 NMAC, 8/1/14]

8.312.2.2 SCOPE: The rule applies to the general public.
[8.312.2.2 NMAC - Rp, 8.312.2.2 NMAC, 8/1/14]

8.312.2.3 STATUTORY AUTHORITY: The New Mexico Medicaid program and other health care programs are administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See Section 27-1-12 et seq. NMSA 1978.
[8.312.2.3 NMAC - Rp, 8.312.2.3 NMAC, 8/1/14]

8.312.2.4 DURATION:
Permanent.
[8.312.2.4 NMAC - Rp, 8.312.2.4 NMAC, 8/1/14]

8.312.2.5 EFFECTIVE DATE:
August 1, 2014, unless a later date is cited

at the end of a section.
[8.312.2.5 NMAC - Rp, 8.312.2.5 NMAC, 8/1/14]

8.312.2.6 OBJECTIVE:
The objective of this rule is to provide instructions for the service portion of the New Mexico medical assistance programs.
[8.312.2.6 NMAC - Rp, 8.312.2.6 NMAC, 8/1/14]

8.312.2.7 DEFINITIONS:
A. **"Authorized representative"** means the individual designated to represent and act on the claimant's behalf. The eligible recipient or managed care organization (MCO) member's authorized representative must provide formal documentation authorizing the named individual or individuals to access the identified case information for a specified purpose and time frame. An authorized representative may be an attorney representing a person or household, a person acting under the authority of a valid power of attorney, a guardian ad litem, or any other individual or individuals designated in writing by the eligible recipient or MCO member.

B. **"Designee"** means a state agency or an institution MAD has designated to be responsible for:
(1) conducting a preadmission screening and annual resident review (PASRR) level 1 screening to identify if a medical assistance program (MAP) eligible recipient or a MCO member has a mental illness or an intellectual disability; or
(2) conducting a PASRR level 2 evaluation.

C. **"DOH-DDSD"** means the developmental disabilities support division of the department of health, which conducts the PASRR level II evaluation for a MAP eligible recipient or a MCO member that has been identified through a PASRR level 1 screen.

D. **"HSD administrative hearing"** or **"fair hearing"** means an informal evidentiary hearing that is conducted by the HSD fair hearings bureau (FHB) so that evidence may be presented as it relates to an adverse action taken, or intended to be taken, by MAD, the MCO or their designees.

E. **"MAD"** means the medical assistance division, which administers Medicaid and other medical assistance programs (MAP) under HSD.

F. **"MAP"** means the medical assistance programs administered by MAD.

G. **"MCO"** means a member's HSD contracted managed care organization.

H. **"Member"** means a MAP eligible recipient enrolled in a HSD

contracted MCO. Once a member requests a HSD administrative hearing, the member is referred to as a claimant.

I. **"Notice of action"** means the notice issued by MAD, the MCO or their designees of their intent to take an adverse action against an eligible recipient or a member in the form an adverse determination is made with regard to the preadmission or annual resident review requirements.

J. **"Nursing facility (NF)"** means a MAD enrolled, and as appropriate, a MCO contracted, nursing facility which meets the requirements as described in 8.312.2 NMAC. The NF completes a PASRR level one screen for a MAP eligible recipient or a MCO member.
[8.312.2.7 NMAC - Rp, 8.312.2.7 NMAC, 8/1/14]

8.312.2.8 MISSION STATEMENT: To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.
[8.312.2.8 NMAC - Rp, 8.312.2.8 NMAC, 8/1/14]

8.312.2.9 NURSING FACILITIES: The New Mexico medical assistance division (MAD) pays for medically necessary health services furnished to eligible recipients and members. To help New Mexico eligible recipients and members receive necessary services, MAD pays for services furnished in nursing facilities.
[8.312.2.9 NMAC - Rp, 8.312.2.9 NMAC, 8/1/14]

8.312.2.10 ELIGIBLE PROVIDERS: Health care to eligible recipients or members is furnished by a variety of providers and provider groups. The reimbursement and billing for these services is administered by MAD. Upon approval of a New Mexico MAD provider participation agreement (PPA) by MAD or its designee, licensed practitioners, facilities and other providers of services that meet applicable requirements are eligible to be reimbursed for furnishing covered services to eligible recipients. A provider must be enrolled before submitting a claim for payment to the MAD claims processing contractors or the MCO. MAD makes available on the HSD/MAD website, on other program-specific websites, or in hard copy format, information necessary to participate in health care programs administered by HSD or its authorized agents, including program rules, billing instructions, utilization review (UR) instructions, and other pertinent materials. When enrolled,

a provider receives instruction on how to access these documents. It is the provider's responsibility to access these instructions, to understand the information provided and to comply with the requirements. The provider must contact HSD or its authorized agents to obtain answers to questions related to the material. To be eligible for reimbursement, a provider must adhere to the provisions of the MAD PPA and all applicable statutes, regulations, and executive orders. MAD, its selected claims processing contractor or the MCO issues payments to a provider using electronic funds transfer (EFT) only. Eligible providers include:

A. nursing facilities (NF) which:

(1) are currently licensed and certified by the department of health (DOH) to meet MAD nursing facility conditions of participation; see 42 CFR Part 483, as amended;

(2) comply with the eligible recipient or MCO member resident's personal funds rules;

(3) comply with MAD, its UR or the MCO UR processes and agree to operate in accordance with all MAD NMAC rules, including the performance of discharge planning;

(4) comply with the NMAC MAD rules for the pre-admission screening and resident review (PASRR) of mentally ill and intellectually disabled program;

(5) ensure the required nurse aide training is implemented; and

(6) ensure that facilities with 60 or more MAD beds certify a minimum of four distinct beds in the medicare program;

B. the above requirements can be waived if the NF meets one of the following conditions:

(1) the NF is located in a rural area and is unable to attract therapists as required by the medicare program. For a waiver to be granted under this condition, the provider must prove that good faith efforts to hire or contract with the required therapists have been made;

(2) the NF has obtained a waiver of the registered nurse (RN) staffing requirement from DOH, in accordance with applicable federal regulations; or

(3) the NF is one of two or more NFs in the same town owned or operated by the same owner/manager and one of the other facilities is medicare-certified; in addition, the NF must demonstrate on a yearly basis that the waiver does not hinder access to medicare part A services for eligible recipients or members and that the facility is using, to the best of its ability, corridor billings to medicare for part B services(s); if medicare removes the ability to do corridor billing, the waiver automatically ceases.

(a) Any requests for a waiver

must contain sufficient documentation to support the request and must be submitted in writing to MAD;

(b) medicare is the primary payer for NF services covered under the medicare program; NF services must be provided within the scope of the practice and licensure for each provider; and must be in compliance with the statutes, rules and regulations of the applicable practice and with the New Mexico administrative code (NMAC) MAD rules. [8.312.2.10 NMAC - Rp, 8.312.2.10 NMAC, 8/1/14]

8.312.2.11 PROVIDER RESPONSIBILITIES:

A. A provider who furnishes services to a medicaid or other health care program eligible recipient or member must comply with all federal and state laws, regulations, and executive orders relevant to the provision of services as specified in the MAD PPA. A provider also must conform to MAD program rules and instructions as specified in the MAD NMAC rule manual and its appendices, and program directions and billing instructions, as updated. A provider is also responsible for following coding manual guidelines and centers for medicare and medicaid services (CMS) national correct coding initiatives (NCCI), including not improperly unbundling or upcoding services.

B. A provider must verify that an individual is eligible for a specific health care program administered by HSD and its authorized agents, and must verify the recipient's enrollment status at the time services are furnished. A provider must determine if an eligible recipient or member has other health insurance. A provider must maintain records that are sufficient to fully disclose the extent and nature of the services provided to an eligible recipient or member.

C. When services are billed to and paid by a MAD fee-for-service coordinated services contractor authorized by HSD, under an administrative services contract, the provider must also enroll as a provider with the coordinated services contractor and follow that contractor's instructions for billing and for authorization of services; see 8.302.1 NMAC. [8.312.2.11 NMAC - Rp, 8.312.2.11 NMAC, 8/1/14]

8.312.2.12 REQUIRED NURSING FACILITY SERVICES: A NF is required to provide the following to a MAP eligible recipient or member resident.

A. Room and board.
B. Professional nursing services 24 hours a day, seven days a week. Professional nursing services are those services which are performed directly by

a RN or a licensed practical nurse (LPN), under the direction of a MAD enrolled, and, as appropriate, MCO contracted medical practitioner.

C. Services of a RN are on an eight hours a day, seven days a week basis, and at least the services of a LPN at all other times.

D. Personal assistance services on a 24 hours a day, seven days a week basis. Personal assistance services are those services, other than professional nursing services, that are provided to an eligible recipient who, because of age, infirmity, physical or behavioral health limitations, requires assistance to accomplish activities of daily living. [8.312.2.12 NMAC - Rp, 8.312.2.12 NMAC, 8/1/14]

8.312.2.13 COVERED SERVICES:

A. MAD covers NF services identified as allowable costs; see 8.312.3 NMAC.

B. MAD covers physical, occupational and speech therapy services furnished to an eligible recipient or member residing in a NF in the following manner:

(1) if the eligible recipient or member is also eligible for medicare and the NF does part B billing, the co-payment or deductible is processed by MAD or the MCO for services is paid by MAD or the MCO;

(2) if the eligible recipient or member receives high NF level services, services are included in the MAD facility rate; or

(3) if eligible, the recipient or member receives low NF level services, services are billed separately by participating therapy providers. [8.312.2.13 NMAC - Rp, 8.312.2.13 NMAC, 8/1/14]

8.312.2.14 NONCOVERED SERVICES: NF services are subject to the limitations and coverage restrictions which exist for other MAD services. See also 8.310.2, 8.310.3, 8.312.3, 8.324.4 NMAC. [8.312.2.14 NMAC - Rp, 8.312.2.14 NMAC, 8/1/14]

8.312.2.15 ELIGIBLE RECIPIENT AND MEMBER PERSONAL FUND ACCOUNTS:

A. As a condition for MAD provider participation, each NF must establish and maintain an acceptable system of accounting for an eligible recipient or member resident's personal funds when an eligible recipient or member requests that his or her personal funds be cared for by the facility. See 42 CFR Section 483.10(c) and see 7.9.2.22 NMAC.

(1) Requests for a NF to care or

not care for an eligible recipient or member resident's funds must be made in writing and secured by a request to handle recipient or member funds form or letter signed by the eligible recipient or member or his or her authorized representative. The form or letter is kept in the eligible recipient or member's file at the facility.

(2) An eligible recipient or member's personal fund consists of a monthly maintenance allowable, established by MAD. If the eligible recipient or member resident receives any income in excess of this allowance, the excess is applied to the cost of the eligible recipient or member resident's medical care at the NF. This excess is reported as a medical care credit to the facility by the local county income support division (ISD) office, when applicable.

(3) A NF must have procedures on the handling of eligible recipient or member residents' funds. These procedures must not allow the facility to commingle eligible recipient or member residents' funds with facility funds.

(4) A NF should use these applicable federal statutes, regulations and state rules to develop procedures for handling eligible recipient or member resident's funds.

(5) An eligible recipient or member resident has the right to manage his or her financial affairs and no NF can require an eligible recipient or member resident to deposit his or her personal funds with the NF.

(6) A NF must purchase a surety bond or furnish self-insurance to ensure the security of all personal funds deposited with the NF.

(7) Failure of a NF to furnish an acceptable accounting system constitutes a deficiency that must be corrected by the provider and verified by DOH survey teams.

B. Fund custodians: A NF must designate a full-time employee and an alternate to serve as fund custodians for handling an eligible recipient or member resident's money on a daily basis; see 7.9.2.22 NMAC.

(1) Another individual, other than those employees who have daily responsibility for the fund, must do the following:

(a) reconcile balances of each eligible recipient or member accounts with the collective bank account;

(b) periodically audit and reconcile the petty cash fund; and

(c) authorize checks for the withdrawal of funds from the bank account.

(2) A NF must ensure that there is a full, complete and separate accounting, based on generally accepted accounting principles, of each eligible recipient or member resident's personal funds entrusted

to his or her NF on the eligible recipient or member resident's behalf.

C. Bank account: A NF must establish a bank account for the deposit of all money for each eligible recipient or member resident who requests the NF to handle his or her funds. An eligible recipient or member resident's personal funds are to be held separately and not commingled with the NF funds; see 7.9.2.22 NMAC.

(1) A NF must deposit an eligible recipient or member's personal funds of more than \$50 in an interest bearing account that is separate from any of the NF operating accounts and which credits all interest earned on the eligible recipient or member resident's account to that account. An eligible recipient or member resident must have convenient access to these funds.

(2) A NF must maintain an eligible recipient or member resident's personal funds up to \$50 in an interest bearing account or a petty cash fund that is separate from any of the NF operating accounts. An eligible recipient or member resident must have convenient access to these funds.

(3) Individual financial records must be available on the request of an eligible recipient or member resident or his or her authorized representative.

(4) Within 30 calendar days of the death of an eligible recipient or member resident whose personal funds are deposited with the facility, a NF must convey the deceased eligible recipient or member resident's funds and a final accounting of these funds to the individual or probate jurisdiction administering the deceased eligible recipient or member resident's estate.

D. Establishment of individual accounts: A NF must establish accounts for each eligible recipient or member resident in which all transactions can be recorded. Accounts can be maintained in a general ledger book, card file or loose leaf binder; see 7.9.2.22 NMAC.

(1) For money received, the source, amount and date must be recorded. The NF must provide the eligible recipient or member resident or his or her authorized representative receipts for the money. The NF stills retains a copy of the deposit in the eligible recipient or member resident's individual account file.

(2) The purpose, amount and date of all disbursements to or on behalf of an eligible recipient or member resident must be recorded. All money spent either on behalf of the eligible recipient or member resident or withdrawn by the eligible recipient or member resident or his or her authorized representative must be validated by receipts or signatures on each eligible

recipient or member resident's individual ledger sheet.

(3) The NF must notify each eligible recipient or member resident when the account balance is \$200 less than the supplemental security income (SSI) resource limit for one person specified in Subparagraph (a) of Paragraph (3) of Subsection B of Section 1611 of the Social Security Act. If the amount of the account and the value of the eligible recipient or member resident's other nonexempt resources reach the SSI resource limit for one person, the eligible recipient or member resident can lose eligibility for a medical assistance program (MAP) or SSI.

E. Personal fund reconciliation: The NF must balance each eligible recipient or member resident's individual accounts, the collective bank accounts and the petty cash fund at least once each month. The NF must furnish each eligible recipient or member resident or his or her authorized representative with an accounting of the eligible recipient or member residents' funds at least quarterly. Copies of each eligible recipient or member resident's individual account records can be used to furnish this information; see 7.9.2.22 NMAC.

F. Petty cash fund: The NF must maintain a cash fund in the facility to accommodate the small cash requirements of an eligible recipient or member resident. \$5 or less per each eligible recipient or member resident may be adequate. The amount of money kept in the petty cash fund is determined by the number of NF residents using the service and the frequency and availability of bank service. A petty cash fund ledger must be established to record all actions regarding money in this fund; see 7.9.2.22 NMAC.

(1) To establish the fund, the NF must withdraw money from the collective bank account and keep it in a locked cash box.

(2) To use the petty cash fund, the following procedures should be established:

(a) an eligible recipient or member resident or his or her authorized representative request small amounts of spending money;

(b) the amount disbursed is entered on each eligible recipient resident's individual ledger record; and

(c) the eligible recipient or member resident or his or her authorized representative signs an account record and receives a receipt.

(3) To replenish the petty cash fund, the following procedures should be used.

(a) The money left in the cash box is counted and added to the total of all disbursements made since the last replenishment; and the total of the

disbursements plus cash on hand equals the beginning amount.

(b) Money equal to the amount of disbursements is withdrawn from the collective bank account.

(4) To reconcile the fund, the following procedures should be used once each month:

(a) count money at hand; and

(b) total cash disbursed either from receipts or each eligible recipient or member resident's individual account records; the cash on hand plus total disbursements equals petty cash total.

(5) To close each eligible recipient or member resident account, the NF should do the following:

(a) enter date of and reason for closing the account;

(b) write a check against the collective bank account for the balance shown on each eligible recipient or member resident's individual account record;

(c) get signature of the eligible recipient resident or his or her authorized representative on the eligible recipient or member resident's individual account record, as receipt of payment; and

(d) notify the local ISD office if closure is caused by death of an eligible recipient or member resident so that prompt action can be taken to terminate assistance; within 30 calendar days of the death of an eligible recipient or member resident who has no relatives; the NF conveys the eligible recipient or member resident's funds and a final accounting of the funds to the individual or probate jurisdiction administering the eligible recipient or member resident's estate; see 42 CFR Section 483.10(c)(6).

G. Retention of records:

All account records are retained for at least six years or, in case of an audit, until the audit is completed.

H. Non-acceptable uses of residents' personal funds:

Non-acceptable uses of an eligible recipient or member resident's personal funds include the following:

(1) payment or charges for services or items covered by MAD or medicare specified as allowable costs; see 8.312.3 NMAC;

(2) difference between the NF's billed charge and the MAD payment; and

(3) payment for services or supplies routinely furnished by the NF, such as linens or nightgowns;

(4) a NF cannot impose charges against eligible recipient resident's personal funds for any item or service for which payment is made by MAD or for any item the eligible recipient or member resident or his or her authorized representative did not request;

(5) a NF must not require eligible

recipient or member resident or his or her authorized representative to request any item or service as a condition of admission or continued stay;

(6) a NF must inform an eligible recipient or member resident or his or her authorized representative who requests non-covered items or services that there is a charge for the item and the amount of the charge.

I. Monitoring of residents' personal funds: NFs must make all files and records involving an eligible recipient or member resident's personal funds available for inspection by authorized state or federal auditors. DOH survey teams verify that a NF has established systems to account for an eligible recipient or member resident's personal funds, including the components described above. Failure to furnish an acceptable accounting system constitutes a deficiency that must be corrected; see 7.9.2.22 NMAC. [8.312.2.15 NMAC - Rp, 8.312.2.15 NMAC, 8/1/14]

8.312.2.16 RESERVE BED

DAYS: MAD pays to hold or reserve a bed for an eligible recipient or member resident in a NF to allow for the eligible recipient or member resident to make a brief home visit, for acclimation to a new environment, or for hospitalization according to the limits and conditions outlined below.

A. Coverage of reserve

bed days: MAD covers six reserve bed days per calendar year for every long term care eligible recipient or member resident for hospitalization without prior approval. MAD covers three reserve bed days per calendar year for a brief home visit without prior approval. MAD covers an additional six reserve bed days per calendar year with prior approval to support an eligible recipient or member resident to adjust to a new environment as part of the discharge plan.

(1) An eligible recipient or member resident's discharge plan must clearly state the objectives, including how the home visits or visits to alternative placement relate to discharge implementation.

(2) The prior approval request must include the eligible recipient or member resident's name, MAP identification number, requested approval dates, copy of the discharge plan, name and address for individuals who will care for the eligible recipient or member resident during the visit or placement and a written medical order for trial placement.

B. Documentation of

reserve bed days: When an eligible recipient or member resident is discharged from a NF for any reason, appropriate documentation must be placed in the

eligible recipient or member resident's chart. A medical order must be obtained if the eligible recipient or member resident is hospitalized, requests a home visit or a trial placement.

C. Re-admission review:

A new level of care (LOC) determination must be performed by MAD, its UR contractor or the MCO if an eligible recipient or member resident is gone from this or her NF for more than three midnights. A NF notification form must be completed, including information on the reason for the eligible recipient or member resident's absence, outcome of the leave and any other pertinent information concerning the leave; see the MAD managed care policy manual.

D. Reimbursement and billing for reserve bed days:

Reimbursement for reserve bed days to the NF is limited to the rate applicable for LOC medically necessary for the eligible recipient or member resident, as determined and approved by MAD, its UR contractor or the MCO. The reserve bed day reimbursement is equal to 50% of the regular payment rate for MAD fee-for-service or as otherwise negotiated between the NF provider and the MCO. Billing for reserve bed days is based on the nursing census, which runs from midnight to midnight. MAD or the MCO pays for the admission day but not for the discharge day. [8.312.2.16 NMAC - Rp, 8.312.2.16 NMAC, 8/1/14]

8.312.2.17 LEVEL OF CARE

DETERMINATION: Medical necessity, LOC, and length of stay determinations are carried out in accordance with MAD UR instructions or the MAD MCO policy manual, as authorized under Title XIX of the Social Security Act; see 8.310.2 and 8.350.4 NMAC.

[8.312.2.17 NMAC - Rp, 8.312.2.17 NMAC, 8/1/14]

8.312.2.18 PRE-ADMISSION SCREENING AND RESIDENT

REVIEW (PASRR) OF MENTALLY ILL AND INTELLECTUALLY DISABLED INDIVIDUALS: As part of the initial NF communication form for a new admission or as part of a subsequent specified review as determined by PASRR, or a significant change review as indicated by the minimum data set (MDS) for an eligible recipient or member resident with identified mental illness or is intellectually disabled, the NF must complete a level I PASRR screening. See Omnibus Reconciliation Acts of 1987 and 1990 as codified at 42 CFR Section 483.100 Subpart C. See also P.L. 104-315 which amends title XIX of the Social Security Act effective October 19, 1996. This requirement applies to all applicants or

residents, regardless of payment source.

A. **Pre-admission screens not required:** Pre-admission screens do not need to be performed on the following eligible recipient or member resident:

(1) when admitted from the hospital whose attending physicians certify before admission to the NF that the eligible recipient or member resident is likely to require NF care for less than 30 days (as determined by PASRR review of the his or her level I screen data which was done prior to NF admission);

(2) when readmitted to NFs from a hospital to which he or she was transferred for the purpose of receiving care; and

(3) when transferred from one NF to another without an intervening hospital stay.

B. **Purpose of the screens:** The purpose of the PASRR screen is to determine whether residents have a mental illness or an intellectual disability, need the level of services furnished in a NF and need specialized services based on the mental illness or intellectual disability. A NF performs the level I screen which identifies an eligible recipient or member resident who has a mental illness or an intellectual disability. When an eligible recipient or member resident is identified, the NF refers him or her to the DOH DDSD for a PASRR level II evaluation.

C. **Level II screen determination:** The PASRR level II screen determines the following:

(1) the eligible recipient or member resident's total needs are such that his or her needs can be met in an appropriate community setting;

(2) the eligible recipient or member resident's total needs are such that they can be met only on an inpatient basis, which can include the option of placement in a home and community-based service waiver program, but for which inpatient care is necessary;

(3) if inpatient care is appropriate and desired, the NF is an appropriate institutional setting for meeting those needs; or

(4) if inpatient care is appropriate and desired but the NF is not the appropriate setting for meeting the eligible recipient or member resident's needs, another setting, such as an intermediate care facility for individuals with intellectual disabilities (ICF-IID) can be indicated.

D. **Right to an administrative hearing:** An individual who has been adversely affected by the preadmission screening or resident review screening is entitled to a HSD administrative hearing. See 8.354.2 NMAC for a detailed description of this specific type of HSD administrative hearings.

(1) An eligible recipient or member or his or her authorized representative may request a HSD administrative hearing.

(2) MAD, the MCO or their designees do not pay fees or costs, including attorney's fees, incurred by the individual or his or her authorized representative as a result of a HSD pre-hearing conference or a HSD administrative hearing, or if he or she files an appeal of the HSD administrative hearing final decision.

E. **Restriction on reimbursement for medicaid residents:** A NF is not reimbursed for any service furnished to an eligible recipient or member resident when pre-admission screens, subsequent specified reviews or significant change reviews are not performed in a timely manner. MAD or the MCO pays only for services furnished after the screens or reviews are performed and will recoup amounts paid to a NF during periods of noncompliance. MAD or the MCO payment for services does not begin until a level II screening has been performed, if applicable.

[8.312.2.18 NMAC - Rp, 8.312.2.18 NMAC, 8/1/14]

8.312.2.19 MINIMUM DATA SET:

A. A long term care facility participating in the medicare and is an enrolled MAD provider is required to conduct a comprehensive, accurate, standardized, reproducible assessment of each eligible recipient or member resident's functional capacity. See Sections 4201 (a)(3) and 4211 (a)(3) of the Omnibus Reconciliation Act (OBRA) of 1987.

B. The capacity assessment describes the resident's ability to perform daily life functions and any significant impairment in functional capacity. The assessment is based on a uniform MDS of core elements and common definitions specified by the secretary of the federal health and human services department. A NF is required to use the most current iteration of the MDS. A section of the MDS requires a NF to identify eligible recipient or member residents who may be interested in transitioning back to his or her community.

(1) The resident assessment instrument (RAI) is specified by the state. State RAIs include at least the health care financing administration MDS, triggers, resident assessment protocols (RAPs) and utilization guidelines.

(2) On a date to be specified by the federal government, NFs will be required to encode the MDS in machine-readable form. After that date, all MDS reporting will be done electronically.

[8.312.2.19 NMAC - Rp, 8.312.2.19

NMAC, 8/1/14]

8.312.2.20 MEDICAL CARE

CREDITS: If an eligible recipient or member resident is required to pay a medical care credit, MAD or the MCO reimburses the NF for the difference between the NF's reimbursable rate and the medical care credit. The NF is responsible for collecting the amount reported as the medical care credit. These medical care credit requirements also apply to co-payments and deductibles for medicare crossover payments.

[8.312.2.20 NMAC - Rp, 8.312.2.20 NMAC, 8/1/14]

8.312.2.21 NURSE AIDE

TRAINING: A NF must comply with nurse aide training requirements as a condition of MAD and MCO enrollment and participation; see 42 CFR Section 483 Subpart D. The NF will not be approved as a MAD or MCO provider if the NF has been out of compliance with federal requirement within the previous two calendar years.

A. **Requirements for nurse aide training:** A NF cannot employ individuals as nurse aides for more than four months unless they have completed a nurse aide training and competency evaluation program (NATCEP). The NATCEP program must have a minimum duration of 75 hours.

(1) A nurse aide who has not performed nursing or nursing-related services for monetary compensation for a period of 24 consecutive months since completion of a NATCEP must take either a new NATCEP or a new competency evaluation program (CEP).

(2) A NF must not use temporary nurse aides who have not completed a NATCEP or a CEP.

(3) A NF must ensure that students in the NATCEP programs do not perform any services for which they have not been trained and found proficient by instructors. A NF must ensure that all students in NATCEP programs are under the general supervision of licensed or registered nurses when they perform services for eligible recipient or member residents.

(4) A NF must furnish regular performance reviews and in-service education to ensure that individuals who serve as nurse aides are competent to perform nurse aide services.

B. **Other nurse aide requirements:** A NF must not employ individuals who have been convicted by the court of abuse or neglect of any NF residents or misappropriation of any NF residents' property.

C. **Nurse aide registry:** DOH maintains a registry of all nursing

aides who have successfully completed, who have been considered to have completed a NATCEP or CEP program or who have had the NATCEP or CEP requirement waived by New Mexico. [8.312.2.21 NMAC - Rp, 8.312.2.21 NMAC, 8/1/14]

8.312.2.22 PATIENT SELF DETERMINATION ACT: All adult eligible recipient or member residents of nursing facilities must be informed of their right to make their own health decisions, including the right to accept or refuse medical treatment as specified in the Patient Self-Determination Act; see 8.302.1 NMAC. [8.312.2.22 NMAC - Rp, 8.312.2.22 NMAC, 8/1/14]

8.312.2.23 RESIDENT RIGHTS TO REQUEST AN ADMINISTRATIVE HEARING: An eligible recipient or member resident who believes that the NF has erroneously determined that he or she should be transferred or discharged may request a HSD administrative hearing. A NF must provide an eligible recipient or member resident notice of the proposed transfer or discharge. The notice must inform the eligible recipient or member resident of his or her right to request a hearing, the method by which a hearing can be requested and his or her right to present evidence in person or through his or her authorized representative; see 8.354.2 NMAC and the MAD MCO policy manual. [8.312.2.23 NMAC - Rp, 8.312.2.23 NMAC, 8/1/14]

8.312.2.24 PRIOR APPROVAL AND UTILIZATION REVIEW: All MAD services are subject to utilization review for medical necessity, inspection of care, and program compliance. Reviews can be performed before services are furnished, after services are furnished, and before payment is made, or after payment is made; see 8.310.2 NMAC. The provider must contact HSD or its authorized agents to request UR instructions. It is the provider's responsibility to access these instructions or ask for paper copies to be provided, to understand the information provided, to comply with the requirements, and to obtain answers to questions not covered by these materials.

A. Prior approval: Certain procedures or services can require prior approval from MAD, the MCO or their designee. Services for which prior approval was obtained remain subject to UR at any point in the payment process.

B. Eligibility determination: Prior authorization of services does not guarantee that an individual is eligible for MAD services

or other health care programs. A provider must verify that an individual is eligible for a specific program at the time services are furnished and must determine if the eligible recipient or member has other health insurance.

C. Reconsideration: A provider who disagrees with a prior approval request denial or other review decisions can request a reconsideration of utilization review; see 8.350.2 NMAC. [8.312.2.24 NMAC - Rp, 8.312.2.24 NMAC, 8/1/14]

8.312.2.25 REIMBURSEMENT: A NF provider must submit claims for reimbursement on the long term care turn around document (TAD) or its successor; see 8.302.2 NMAC.

A. MAD reimburses a NF at the lesser of the following:

- (1) the NF's billed charges;
- (2) the prospective reimbursement rates constrained by the ceilings established by MAD; see 8.312.3 NMAC; and
- (3) the NF's billed charge must be its usual and customary charge for services; "usual and customary charge" refers to the amount which the individual provider charges the general public in the majority of cases for a specific procedure or service.

B. Reimbursement limitations: Payments are made only to a MAD enrolled, and as appropriate a HSD MCO contracted NF. Payments to a NF are limited to those service costs which are included as allowable costs under approved provisions of the medicaid state plan or the MAD alternative benefit; see 8.312.3 NMAC. All claims for payment from MAD or the MCO are subject to utilization review and control.

C. Reimbursement methodology: See 8.312.3 NMAC for a detailed description of this methodology. [8.312.2.25 NMAC - Rp, 8.312.2.25 NMAC, 8/1/14]

HISTORY OF 8.312.2 NMAC:

Pre- NMAC History: The material in this part was derived from that previously filed with the State Records Center: ISD 310.0300, Care in Skilled Nursing Facility and Intermediate Care Facility, filed 2/27/80.

MAD Rule 310.03, Care in Skilled Nursing Facility and Intermediate Care Facility, filed 12/1/87.

MAD Rule 310.03, Care in Skilled Nursing Facility and Intermediate Care Facility, filed 1/6/88.

MAD Rule 310.03, Care in Nursing Facilities and Intermediate Care Facilities for the Mentally Retarded, filed 3/27/92. SP-004.1903, Section 4, General Program Administration Reserve Beds, filed 6/10/81. SP-004.1101, Section 4, General Program

Administration Standards for Institutions, filed 6/26/81.

History of Repealed Material: MAD Rule 310.03, Care in Nursing Facilities and Intermediate Care Facilities for the Mentally Retarded, filed 3/27/92 - Repealed effective 2/1/95. 8.312.2 NMAC, Nursing Facilities, filed 5-27-2010 - Repealed effective 10-15-2012. 8.312.2 NMAC, Nursing Facilities, filed 10-2-2012 - Repealed effective 8-1-2014.

**NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION**

**TITLE 8 SOCIAL SERVICES
CHAPTER 350 RECONSIDERATION
OF UTILIZATION REVIEW
PART 2 RECONSIDERATION
OF UTILIZATION REVIEW
DECISIONS**

8.350.2.1 ISSUING AGENCY: New Mexico Human Services Department (HSD). [8.350.2.1 NMAC - Rp, 8.350.2.1 NMAC, 8/1/2014]

8.350.2.2 SCOPE: The rule applies to the general public. [8.350.2.2 NMAC - Rp, 8.350.2.2 NMAC, 8/1/2014]

8.350.2.3 STATUTORY AUTHORITY: The New Mexico medicaid program and other health care programs are administered pursuant to regulations promulgated by the federal department of health and human services under title XIX of the Social Security Act as amended or by state statute. See Section 27-1-12 et seq. NMSA 1978. [8.350.2.3 NMAC - Rp, 8.350.2.3 NMAC, 8/1/2014]

8.350.2.4 DURATION: Permanent. [8.350.2.4 NMAC - Rp, 8.350.2.4 NMAC, 8/1/2014]

8.350.2.5 EFFECTIVE DATE: August 1, 2014 unless a later date is cited at the end of a section. [8.350.2.5 NMAC - Rp, 8.350.2.5 NMAC, 8/1/2014]

8.350.2.6 OBJECTIVE: The objective of this rule is to provide instructions for the service portion of the New Mexico medicaid programs. [8.350.2.6 NMAC - Rp, 8.350.2.6 NMAC, 8/1/2014]

8.350.2.7 DEFINITIONS:

[RESERVED]

8.350.2.8 MISSION

STATEMENT: To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.

[8.350.2.8 NMAC - Rp, 8.350.2.8 NMAC, 8/1/2014]

8.350.2.9 UTILIZATION REVIEW DECISIONS:

A. Utilization review (UR) decisions are those decisions the medical assistance division (MAD), its utilization review (UR) contractor or a MAD designee makes regarding the medical necessity of services or items that require authorization for medical necessity or a level of care (LOC) determination prior to reimbursement by MAD and its fee-for-service program. For applicable rules for services and items provided through a MAD managed care organization (MCO), refer to 8.308.15 NMAC. For applicable rules for services and items provided through coordinated service contractors, refer to 8.349.2 NMAC.

B. For services for which payment has already been made for which MAD is recouping payment due to a post payment review of medical necessity or LOC, the applicable rule is 8.532.3 NMAC.

C. Decisions are based on information submitted by the provider in a format specified by MAD, its UR contractor, or a MAD designee, and applicable New Mexico Administrative Code (NMAC) MAD rules.

D. Prior to making a decision, MAD, its UR contractor or a MAD designee may issue a request for information (RFI) to the provider requesting clarification or additional information in order to have sufficient information to render an appropriate decision. The provider must submit the clarification or additional information within 21 calendar days of issuance of the request or a technical denial may be issued.

E. MAD, its UR contractor or a MAD designee may deny or reduce the authorized services or items in frequency, intensity, duration, quantity, scope or level of care after considering the submitted documentation or NMAC MAD rules. An eligible provider or eligible recipient who is dissatisfied with the decision may proceed as detailed in Section 10 of this rule.

[8.350.2.9 NMAC - Rp, 8.350.2.9 NMAC, 8/1/2014]

8.350.2.10 RECONSIDERATION OF UTILIZATION REVIEW

DECISIONS: A provider who is

dissatisfied with a medical necessity or LOC decision by MAD, its UR contractor or a MAD designee, can request reconsideration. An eligible recipient who is dissatisfied with a medical necessity or LOC decision by MAD, its UR contractor or a MAD designee, can request the provider to pursue reconsideration on his or her behalf.

A. **Time constraints and submission requirements:** Requests for reconsideration must be in writing and received by MAD, its UR contractor or a MAD designee within 30 calendar days after the date on the initial notice of action.

B. **Requirement for filing an extension:** MAD, its UR contractor or a MAD designee will accept a request for reconsideration filed up to 14 calendar days past the 30 calendar day limit if MAD finds that there was good cause for the provider's or the eligible recipient's failure to file a timely request. The provider or the eligible recipient must furnish written documentation of good cause. Good cause includes a death in the family, a disabling personal illness or another significant emergency or other exceptional circumstance.

C. **Information required in the request for reconsideration:** The request for reconsideration must include the following:

- (1) reference to the challenged decision or action;
- (2) basis for the challenge;
- (3) copies of any document(s) pertinent to the challenged decision or action;
- (4) copies of claim form(s) if the challenge involves a claim for payment which is denied due to an UR decision; and
- (5) a statement that a reconsideration of the decision is requested.

D. **Individuals conducting reconsideration review:** Individuals employed by MAD, its UR contractor or a MAD designee who were not participants in the initial UR decision conduct the reconsideration review.

E. **Information used in reconsideration process:** MAD, its UR contractor or a MAD designee reviews the information and findings upon which the initial action was based and any additional information submitted to, or otherwise obtained by MAD, its UR contractor or a MAD designee. The information can include the following:

- (1) case records and other applicable documents submitted to MAD, its UR contractor or a MAD designee by the provider when the request for services was initially submitted;
- (2) findings of the reviewer resulting in the initial decision;
- (3) complete record of the service(s) provided, including hospital or

medical records; and

(4) additional documents submitted by the provider to support a reconsideration review.

F. **Decision deadline:** MAD, its UR contractor or a MAD designee performs the reconsideration and furnishes the reconsideration decision within 10 business days of receipt of the reconsideration request.

G. **Notification of reconsideration decision:** MAD, its UR contractor or a MAD designee gives the provider and the eligible recipient written notice of the reconsideration determination. If the decision is adverse to the eligible recipient, the notice also includes information on the eligible recipient's right to a HSD administrative hearing and timeframes to file for a hearing and request for a continuation of his or her current benefit.

[8.350.2.10 NMAC - Rp, 8.350.2.10 NMAC, 8/1/2014]

8.350.2.11 CLAIMANT

HEARINGS: MAD has established a process to determine if an individual is eligible to request a HSD administrative hearing. MAD has also established a process for an individual or the individual's authorized representative to request an HSD administrative hearing when an UR reconsideration decision results in an adverse action that is intended or has been taken by MAD, its UR contractor or a MAD designee. See 8.352.2 NMAC for the definition of an authorized representative. MAD must grant an individual or his or her authorized representative the opportunity for a HSD administrative hearing under specific circumstances pursuant to 42 CFR Section 431.220(a) and Section 27-3-3 NMSA 1978. A request for a HSD administrative hearing must be received within 30 days of the date of its UR reconsideration decision. A HSD administrative hearing occurs telephonically between the parties to the hearing and the assigned ALJ. See 8.352.2 NMAC for detailed description of a HSD administrative claimant hearing process. At the time the eligible recipient or his or her authorized representative requests a HSD administrative hearing, the eligible recipient is referred to as the claimant.

A. **Record preservation:** To preserve a record for review, MAD, its UR contractor or a MAD designee documents and retains a record of the reconsideration determination.

B. **Documentation requirements:** The record preserved by MAD, its UR contractor or a MAD designee includes all documentation of the initial UR decision, copies of any documents relevant to the initial decision,

any additional evidence presented during the reconsideration, and a copy of the reconsideration determination.

[8.350.2.11 NMAC - Rp, 8.350.2.11 NMAC, 8/1/2014]

HISTORY OF 8.350.2 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center: ISD 306.1000, Reconsideration Procedures for Ambulatory Care, filed 1/7/80. ISD 306.1000, Reconsideration Procedures for Ambulatory Care, filed 7/8/82. ISD 306.2000, Reconsideration Procedures for Delegated Hospitals, filed 1/7/80. ISD 306.3000, Reconsideration Procedures for Non-Delegated and Non-Designated Hospitals, filed 1/7/80.

History of Repealed Material:
8.350.2 NMAC, Reconsideration of Utilization Review Decisions - Repealed 8/1/2014.

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

TITLE 8 SOCIAL SERVICES CHAPTER 354 PREADMISSION SCREENING AND ANNUAL RESIDENT REVIEW (PASRR) AND PATIENT STATUS POLICIES PART 2 PASRR AND PATIENT STATUS HEARINGS

8.354.2.1 ISSUING AGENCY:
New Mexico Human Services Department (HSD).
[8.354.2.1 NMAC - Rp, 8.354.2.1 NMAC, 8/1/14]

8.354.2.2 SCOPE: The rule applies to the general public.
[8.354.2.2 NMAC - Rp, 8.354.2.2 NMAC, 8/1/14]

8.354.2.3 STATUTORY AUTHORITY: The New Mexico medicaid program and other health care programs are administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See Section 27-1-12 et seq. NMSA 1978.
[8.354.2.3 NMAC - Rp, 8.354.2.3 NMAC, 8/1/14]

8.354.2.4 DURATION:
Permanent.
[8.354.2.4 NMAC - Rp, 8.354.2.4 NMAC, 8/1/14]

8.354.2.5 EFFECTIVE DATE:
August 1, 2014, unless a later date is cited at the end of a section.
[8.354.2.5 NMAC - Rp, 8.354.2.5 NMAC, 8/1/14]

8.354.2.6 OBJECTIVE: The New Mexico medicaid program and other health care programs are administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See Section 27-1-12 et seq. NMSA 1978.
[8.354.2.6 NMAC - Rp, 8.354.2.6 NMAC, 8/1/14]

8.354.2.7 DEFINITIONS:
A. **“Administrative law judge (ALJ)”** means the HSD fair hearings bureau’s (FHB) appointed judge to oversee the claimant’s administrative hearing process and render a recommendation to the medical assistance division (MAD) director.
B. **“Adverse action”** means:

- (1) the belief of a claimant or his or her authorized representative that his or her preadmission or annual resident review (PASRR) determination is erroneous; or
- (2) the belief of a claimant or his or her authorized representative that the claimant’s NF determination to transfer or discharge him or her is erroneous.

C. **“Authorized representative”** means the individual designated to represent and act on the claimant’s behalf during the appeal process. The claimant or the claimant’s authorized representative must provide formal documentation authorizing the named individual or individuals to access the identified case information for a specified purpose and time frame. An authorized representative may be an attorney representing a person or household, a person acting under the authority of a valid power of attorney, a guardian, or any other individual or individuals designated in writing by the claimant.

D. **“Claimant”** means the individual requesting a HSD administrative hearing that is claiming to be affected by an adverse action or actions taken or intended to be taken by MAD, its utilization review (UR) contractor, the MCO or their designees.

E. **“Denial”** means the decision not to authorize the medical assistance program (MAP) eligible recipient or a MCO member’s requested services, item, or level of care (LOC).

F. **“Designee”** means a state agency or an institution MAD has designated to be responsible for:

- (1) conducting a PASRR level I screening to identify if a MAP eligible

recipient or a MCO member has a mental illness or an intellectual disability; or
(2) conducting a PASRR level II evaluation.

G. **“DOH-DDSD”** means the developmental disabilities support division of the department of health, which conducts the PASRR level II evaluation for a MAP eligible recipient or a MCO member that has been identified through a PASRR level I screen.

H. **“HSD administrative hearing”** or “fair hearing” means an informal evidentiary hearing that is conducted by the FHB so that evidence may be presented as it relates to an adverse action taken, or intended to be taken, by MAD, its UR contractor, or the MCO, or their designees.

I. **“MAD”** means the medical assistance division, which administers medicaid and other medical assistance programs under HSD.

J. **“MAP”** means the medical assistance programs administered by MAD.

K. **“MCO”** means a member’s HSD contracted managed care organization.

L. **“Member”** means a MAP eligible recipient enrolled in a HSD contracted MCO. Once a member requests a HSD administrative hearing, the member is referred to as a claimant.

M. **“Notice of action”** means the notice issued by MAD, its UR contractor, the MCO or their designees of their intent to take an adverse action against eligible recipient or a member in the form an adverse determination is made with regard to the preadmission or annual resident review requirements or a discharge or transfer from a NF.

N. **“Nursing facility (NF)”** means a MAD enrolled, and as appropriate, a MCO contracted, NF which meets the requirements as described in 8.312.2 NMAC and is designated by MAD, its UR contractor, or the MCO to complete a PASRR level I screen for a MAP eligible recipient or a MCO member.

O. **“Parties to the hearing”** are MAD, its UR contractor, the MCO or their designees and the claimant or his or her authorized representative.
[8.354.2.7 NMAC - Rp, 8.354.2.7 NMAC, 8/1/14]

8.354.2.8 MISSION STATEMENT: The objective of this rule is to provide instruction for the service portion of the New Mexico medical assistance programs.
[8.354.2.8 NMAC - Rp, 8.354.2.8 NMAC, 8/1/14]

8.354.2.9 CLAIMANT OR

THE CLAIMANT'S AUTHORIZED REPRESENTATIVE AND HSD ADMINISTRATIVE HEARING

PROCESS: HSD has established a hearing process for a MAP eligible recipient or a MCO member who is adversely affected by the preadmission screening and annual resident review (PASRR) or the transfer or discharge from a NF as required by Section 1919(e)(7) of the Social Security Act.

A. Claimant:

(1) When an adverse action (see Subsection B of 8.354.2.7 NMAC) is intended or taken against a MAP eligible recipient by MAD, its UR contractor or their designee, the MAP eligible recipient may file as a claimant to request a HSD administrative hearing.

(2) When an adverse action (see Subsection B of 8.354.2.7 NMAC) is intended or taken against a member by his or her MCO or its designee, the member may file as a claimant to request a HSD administrative hearing. A member is not required to first exhaust his or her MCO appeal process prior to filing for a HSD administrative hearing when affected by an adverse action listed in 8.354.2.7 NMAC. Upon requesting a HSD administrative hearing, the member is referred to as the claimant and is governed by the remaining sections of this rule.

(3) A claimant must request a HSD administrative hearing within 90 calendar days of the mailing of either the notice of action or the denial for new service.

B. A claimant or the claimant's authorized representative may have legal counsel assist him or her during the HSD administrative hearing process. If a claimant or the claimant's authorized representative, MAD, its UR contractor, the MCO or their designees retains legal counsel, that legal counsel must submit a notice of appearance to the assigned ALJ. The ALJ will forward this notice to the MAD administrative hearings unit (MAD AHU).

C. The claimant or claimant's authorized representative may also choose a relative, friend or other spokesperson (spokesperson) to represent or assist him or her in the HSD administrative hearing process.
[8.354.2.9 NMAC - Rp, 8.354.2.9 NMAC, 8/1/14]

8.354.2.10 RIGHT TO A PASRR AND NURSING FACILITY TRANSFER OR DISCHARGE HSD ADMINISTRATIVE HEARING: This specific type of a HSD administrative hearing is an informal evidentiary hearing that is conducted by the FHB so that evidence may be presented as it relates to an adverse action taken or intended to be

taken, against an individual by MAD, its UR contractor, the MCO and their designees. MAD or the MCO must grant an individual or the individual's authorized representative the opportunity for a HSD administrative hearing under specific circumstances pursuant to 42 CFR Section 431.220(a) and 27-3-3 NMSA 1978. A HSD administrative hearing occurs telephonically between the parties to the HSD administrative hearing and the assigned FHB ALJ.

A. An individual or the individual's authorized representative may request a HSD administrative hearing based on his or her belief that MAD, its UR contractor, the MCO or their designees intends to take, or has taken, an adverse action.

B. MAD, its UR contractor, the MCO or their designees will not be responsible for any fees or costs, incurred by the individual or his or her authorized representative as a result of a HSD administrative hearing, or if he or she files an appeal of the HSD administrative hearing final decision to a New Mexico district court.
[8.354.2.10 NMAC - Rp, 8.354.2.10 NMAC, 8/1/14]

8.354.2.11 NOTICE, TIME LIMITS, POSTPONEMENT, OR THE DISMISSAL OF A HSD ADMINISTRATIVE HEARING REQUEST:

A. **Notice:**

(1) In cases involving a PASRR determination or the determination to transfer or discharge the claimant from a NF, the notice of action is submitted by MAD, its UR contractor, the MCO or their designees. MAD, its UR contractor, the MCO or their designees shall issue a "notice of action" to an individual when it intends to take an adverse action against the individual. When the notice of action is concerning the LOC determination the MAP eligible recipient or the member currently has, the notice of action shall be sent not less than 10 calendar days prior to the date of MAD, its UR contractor, the MCO or their designee's intended adverse action.

B. **Exceptions to a notice of action:** Notwithstanding the notice requirement set forth in the preceding Subsection, MAD, its UR contractor, the MCO or their designees may mail a notice of action to the individual or the individual's authorized representative or estate (in the event of an individual's death) no later than the actual date of the intended adverse action when:

(1) MAD, its UR contractor, the MCO or their designees has confirmed the death of the individual;

(2) MAD, its UR contractor, the

MCO or their designees has received a clear written statement signed by the individual or the individual's authorized representative that all or a portion of an authorized service is no longer wanted;

(3) the individual or the individual's authorized representative provides information to MAD, its UR contractor, the MCO or their designees that indicates his or her understanding that such information may require MAD, its UR contractor, the MCO or their designees to take the adverse action;

(4) MAD, its UR contractor, the MCO or their designees learns the individual is residing in an institution, which renders the individual ineligible for MAP enrollment and MAD services;

(5) MAD, its UR contractor, the MCO or their designees cannot determine the physical location of either the individual, or if designated, his or her authorized representative;

(6) MAD, its UR contractor, the MCO or their designees have established that the individual has been accepted for medicaid services outside of the state; or

(7) the primary care provider for the individual has prescribed a change in his or her LOC.

C. **Time limits:** an individual or his or her authorized representative must adhere to the time limits for requesting for a continuation of a benefit and for requesting a HSD administrative hearing.

(1) Requesting a HSD administrative hearing: An individual has 90 calendar days from the date of the notice of action to request a HSD administrative hearing. To be considered timely, the request must be received by one of the following: FHB, the individual's local income support division (ISD) office, offices of DOH-DDSS, the NF the individual resides at, or the MAD's director's office no later than the close of business on the 90th calendar day immediately following the date of the notice of action. If the request for a HSD administrative hearing is mailed by the individual, the request must be postmarked by the 90th calendar day from the date of the notice of action.

(2) Continuation of a benefit:

(a) A claimant may request the current benefit that is the subject of an adverse action continue while his or her HSD administrative hearing proceeds. A request for a continuation of a benefit shall be accorded to any claimant who requests the continuation within 10 calendar days of the mailing of the notice of action by MAD, its UR contractor, the MCO or their designees. The continuation of the benefit will be the same as the claimant's current benefit or LOC. MAD, its UR

contractor, the MCO or their designees must provide information in its notice of action of a claimant rights and limitations to continue a benefit during his or her HSD administrative hearing process.

(b) A continuation of the benefit in a NF is not approved for a claimant:

(i) when the health or safety of other residents in the NF would be endangered by the claimant's continued presence;

(ii) the claimant's health improves sufficiently to allow a more immediate transfer or discharge;

(iii) an immediate transfer or discharge is required by the claimant's urgent medical needs; or

(iv) the claimant has not resided in the NF for 30 consecutive calendar days or more.

(4) The HSD administrative hearing is concluded within 90 calendar days from the date the claimant or the claimant's authorized representative requests a HSD administrative hearing unless the claimant or the claimant's authorized representative agrees to extend the HSD administrative hearing time frame in order to facilitate the process.

D. Dismissal of a hearings request: HSD authorizes FHB to issue a dismissal of a claimant's request for a HSD administrative hearing when:

(1) the request is not received within the time periods specified in the rules and notice of action;

(2) the request is withdrawn or cancelled in writing by the claimant or the claimant's authorized representative;

(3) the sole issue presented concerns a federal or state statute, regulation or rule requiring an adjustment of benefits for all or certain classes of individuals, including, but not limited to, a termination, modification, reduction, or suspension of a service;

(4) the same issue involving the claimant has already been subject to a final decision by the MAD director following a HSD administrative hearing;

(5) the sole issue presented is regarding a New Mexico administrative code (NMAC) rule rather than the application of the rule to the claimant; or

(6) the claimant or the claimant's authorized representative fails to appear at a scheduled hearing without good cause; the claimant or the claimant's authorized representative request for a HSD administrative hearing may be considered abandoned and therefore dismissed if the claimant or the claimant's authorized representative fails to appear telephonically or in person (if the claimant or the claimant's authorized representative has elected to participate in this manner) at the time of the hearing; however, if the claimant

or the claimant's authorized representative presents to the ALJ good cause for failure to appear within 10 calendar days after the date of the HSD administrative hearing, the HSD administrative hearing may be rescheduled; good cause includes a death in the family, a disabling personal illness or another significant emergency, or at the discretion of the ALJ, as appropriate, for another exceptional circumstance; if the ALJ agrees the claimant or the claimant's authorized representative showed good cause, the HSD administrative hearing will be reschedule.

[8.354.2.11 NMAC - Rp, 8.354.2.10 and 8.354.11 NMAC, 8/1/14]

8.354.2.12 SCHEDULING OF A HSD ADMINISTRATIVE HEARING:

A. Scheduling: The ALJ will assign a date for a HSD administrative hearing that affords the MAD director the opportunity to render his or her HSD administrative hearing final decision within the 90 calendar day time limit. The claimant or the claimant's authorized representative must agree via a recorded message to the assigned ALJ or in writing to the assigned ALJ to extend the 90 calendar day time limit up to an additional 30 calendar days to provide the necessary time for the HSD administrative hearing to be conducted and a final decision rendered. The ALJ has the authority on a case-by-case basis to extent the 90-calendar day time limit to more than 30-calendar days when the claimant or the claimant's authorized representative requests such an extension in writing. If an accommodation is necessary for a disability, the claimant or the claimant's authorized representative must notify FHB at least 10 calendar days prior to the HSD administrative hearing.

B. Rescheduling: Any party to a HSD administrative hearing may request, and is entitled to receive, one postponement of a HSD administrative hearing, as long as it does not interfere with the HSD administrative hearing final decision time frames.

(1) A request for more than one postponement is at the ALJ's discretion on a case-by-case basis.

(2) The claimant or the claimant's authorized representative must agree to allow the ALJ to extend the 90 calendar day time limit up to an additional 30 calendar days to provide the necessary time for the HSD administrative hearing to be conducted and a final decision rendered.

C. Expedited HSD administrative hearing: Any party may request an expedited HSD administrative hearing in cases involving a claimant's health, safety, or service availability issues. The request must be made in writing to the claimant's assigned ALJ. The request must

state in detail the reasons why an expedited HSD administrative hearing is necessary. The granting of an expedited HSD administrative hearing is at the discretion of the ALJ.

[8.354.2.12 NMAC - Rp, 8.354.2.11 NMAC, 8/1/14]

8.354.2.13 SUMMARY OF EVIDENCE (SOE):

A. Summary of evidence.

(1) At a HSD administrative hearing, MAD has the burden to prove through the preponderance of the evidence that an adverse action against a claimant is correct. A summary of evidence (SOE) provides information concerning the basis of MAD, its UR contractor, the MCO or their designee's adverse action. MAD may have its UR contractor, HSD MCO or its designee complete an SOE for final review by MAD; however, MAD is ultimately responsible for the submission of its SOE. An SOE is submitted by MAD to the ALJ and claimant or the claimant's authorized representative within specified time-frames.

(2) A claimant or the claimant's authorized representative may submit a SOE to provide the ALJ with information to refute MAD's SOE. A claimant or the claimant's authorized representative is not required to provide a SOE as the burden of proof falls on MAD.

(3) The MAD SOE shall, at a minimum, contain:

(a) the claimant's name, and as applicable, his or her authorized representative's or legal counsel's telephone number and address, and the status of any previous or concurrent appeal through his or her MCO or MAD UR contractor;

(b) the adverse action against the claimant;

(c) the documentation supporting MAD, its UR contractor, the MCO or their designee basis for the intended or taken adverse action; and

(d) any applicable federal or state statutes, regulations, rules or any combination of these; however, that a failure by MAD, the UR contractor, the MCO or their designee to submit an applicable statute, regulation or rule shall not constitute per se grounds for the ALJ to find that MAD, the UR contractor, the MCO or their designee failed to meet its burden of proof.

B. Timeframes.

(1) The HSD administrative hearing.

(a) MAD's SOE shall be delivered to the ALJ and the parties to the HSD administrative hearing at least 10 working days prior to the HSD administrative hearing.

(b) MAD's SOE may be amended by MAD at any point prior to the HSD

administrative hearing if the ALJ and the claimant or the claimant's authorized representative is delivered copies of the amended SOE at least two working days prior to the HSD administrative hearing. MAD is responsible for providing its UR contractor, the MCO or their designee the amended SOE.

(c) If the claimant or his or her authorized representative has a SOE that he or she wants entered into evidence for the HSD administrative hearing, he or she must provide the ALJ the SOE not less than three working days prior to the HSD administrative hearing. The ALJ will provide MAD AHU with a copy of the claimant's SOE within one working day of its receipt. The MAD AHU will provide a copy of the SOE to one or more as appropriate: its UR contractor, the MCO or their designee within one working day of its receipt.

(d) If the claimant or the claimant's authorized representative has an amendment to his or her SOE, he or she shall follow the process in Subparagraph (c) of Paragraph (1) of Subsection B of this section.

(2) The failure of MAD to provide its SOE in a timely manner may, at the ALJ's discretion result in its exclusion or a postponement of the HSD administrative hearing charged against MAD.

(3) If the claimant or the claimant's authorized representative fails to provide the assigned ALJ a SOE or any amendments to the SOE within the specified time-frames, and the claimant or the claimant's authorized representative wishes to submit such documents for consideration at the HSD administrative hearing, the claimant or the claimant's authorized representative will utilize his or her one allowed postponement opportunity in which to submit the SOE or any amendments to the ALJ. The ALJ will follow the process in Subparagraph (b) of Paragraph (1) of Subsection B of this section for the disbursement of the amended SOE.

C. Availability of information to the claimant or the claimant's representative: MAD, its UR contractor, the MCO or their designee shall:

(1) provide upon request to the claimant or his or her authorized representative, any document in its possession concerning its adverse action against the claimant that is not already in its SOE;

(2) provide the claimant or the claimant's authorized representative the requested documents and such documents will be provided by MAD, its UR contractor, the MCO or their designee to the claimant or the claimant's authorized representative in a timely manner and without charge.

D. No party to a HSD administrative hearing may present into evidence, as part of an amended SOE, any document or record that any other party of the hearing has not received at least two working days prior to the HSD administrative hearing. The ALJ will not take such information into consideration when reaching his or her recommendation. [8.354.2.13 NMAC - Rp, 8.354.2.11 NMAC, 8/1/14]

8.354.2.14 ADMINISTRATIVE HEARING STANDARDS:

A. Administrative law judge.

(1) A HSD administrative hearing is conducted by an impartial official who:

(a) does not have any personal stake or involvement in the case; and
(b) was not involved in the determination or the action which is being contested; if the ALJ had any involvement with the action in question, including giving advice or consultation on the points at issue, or is personally related in any relevant degree to the parties, the ALJ must disqualify his or herself as the assigned ALJ for that case.

(2) In conducting a HSD administrative hearing, the ALJ must:

(a) explain how the HSD administrative hearing will be conducted to participants at the start of the hearing, before administering oaths;

(b) administer oaths and affirmations;

(c) request, receive, and make part of the record all evidence that has been provided to each party within the required time-frames that the ALJ considers necessary to decide the issues raised;

(d) regulate the conduct and the course of the HSD administrative hearing to ensure an orderly HSD administrative hearing;

(e) request, if appropriate, an independent physical or behavioral health assessment or a professional evaluation from a source mutually satisfactory to the parties at no cost to the claimant; and

(f) produce the ALJ HSD administrative hearing report that includes findings of fact and recommendations for the MAD director's consideration.

(3) Appointment of the ALJ: the ALJ is appointed by FHB upon receipt of the request for a HSD administrative hearing. The ALJ will be copied on all written communications between the parties to HSD administrative hearing to ensure all parties are free of undue influence and receive written notices and documents within the required time-frames.

B. Record of the hearing: A HSD administrative hearing is digitally recorded. The digital recording, findings

of fact, SOEs and any amendments, pleadings, documents, NMAC rules, other relevant statutes or other exhibits admitted into evidence, as well as the ALJ's recommendations will be available to the parties for one calendar year following the HSD administrative hearing final decision. These items are referred to as the record of the HSD administrative hearing. Parties to the HSD administrative hearing may request one copy of the record without charge. Subsequent copies will be charged at a pre-determined rate set by HSD.

C. Rights at an administrative hearing: A claimant or the claimant's authorized representative will provide the assigned ALJ a signed release-of-information in order for a designated spokesperson to assist or represent the claimant or the claimant's authorized representative in presenting the claimant's case at a HSD administrative hearing. If a claimant or the claimant's authorized representative, MAD, its UR contractor, the MCO or their designee retains legal counsel, that legal counsel must submit a notice appearance to the assigned ALJ and the ALJ will forward this information to the MAD administrative hearings unit (MAD AHU). The parties are given an opportunity to:

(1) call witnesses to present information relevant to the case;

(2) submit evidence to establish all pertinent facts and circumstances in the case;

(3) advance arguments without undue interference; and

(4) question or contradict any testimony or evidence, including an opportunity to confront and cross-examine opposing witnesses.

D. Evidence and procedure: Formal rules of evidence and civil procedure do not apply to a HSD administrative hearing. A free, orderly exchange of relevant information is necessary for the decision-making process.

(1) Admissibility: all relevant evidence is admissible subject to the ALJ's authority to limit repetitive, scandalous or unduly cumulative evidence and his or her ability to conduct an orderly HSD administrative hearing. The ALJ must admit evidence that is relevant to the intended or taken adverse action by MAD, its UR contractor, the MCO or their designees.

(2) Confidentiality: the confidentiality of records is to be maintained;

(3) Information not entered in the hearing record: information which is not presented during the HSD administrative hearing in the presence of the claimant or the claimant's authorized representative, MAD, its UR contractor, the MCO or their

designees may not be used by the ALJ in making his or her record of fact finding and recommendation.

(4) Administrative notice: the ALJ may take administrative notice of any matter in which courts of this state may take judicial notice.

(5) Privilege: the rules of privilege apply to the extent that they are required to be recognized in civil actions in the district courts of New Mexico.

(6) Medical issues: in a case involving physical or behavioral health issues, the parties may submit expert testimony, reports, affidavits or health care records into evidence as necessary. Admission of this evidence is at the discretion of the ALJ and must meet the SOE time-frames for submission. All parties of the HSD administrative hearing have the right to examine any documents which may influence the HSD administrative hearing final decision. [8.354.2.14 NMAC - Rp, 8.354.2.12 NMAC, 8/1/14]

8.354.2.15 CONDUCTING THE HSD ADMINISTRATIVE HEARING:

A HSD administrative hearing is conducted in an orderly manner and in an informal atmosphere. The HSD administrative hearing is normally conducted telephonically and is not open to the general public. The assigned ALJ has the authority to limit the number of persons in attendance as necessary for the ALJ to control the hearing.

A. Opening the hearing:

The HSD administrative hearing is opened by the assigned ALJ. All individuals present at the hearing must identify themselves for the record, including when the claimant or the claimant's authorized representative has other representation or legal counsel to assist him or her during the HSD administrative hearing. The ALJ shall explain his or her role in conducting the HSD administrative hearing that he or she will submit the record of the HSD administrative hearing to the MAD director and that the final decision of the HSD administrative hearing will be made by the MAD director or designee after review of the record of the HSD administrative hearing.

B. Order of testimony:

The order of testimony is described, and the oath is administered to all who will testify at the HSD administrative hearing. Because the burden of proof is with MAD, it is at the claimant or the claimant's authorized representative's discretion to call witnesses or to present evidence. The order of testimony at the HSD administrative hearing is as follows:

(1) opening statements of parties, authorized representatives, or designees, or

if the claimant or the claimant's authorized representative through a signed statement has identified a designated spokesperson or legal counsel to assist him or her during the HSD administrative hearing process;

(2) presentation of MAD's case; if witnesses are called, the order of examination of each witness is:

(a) examination by MAD, its UR contractor, the MCO or their designees or other MAD designees;

(b) cross examination by the claimant, the claimant's authorized representative, designated spokesperson, or his or her legal counsel; and

(c) MAD's opportunity to redirect the witness;

(3) presentation of the claimant's case is at the claimant or the claimant's authorized representative discretion; if witnesses are called, the order of examination of each witness is:

(a) examination by claimant or the claimant's authorized representative, designated spokesperson or legal counsel;

(b) cross examination by MAD, its UR contractor, the MCO or their designees or another MAD designees and

(c) the claimant, claimant's authorized representative or designated spokesperson, or legal counsel's opportunity to redirect the witness;

(4) presentation of rebuttal evidence by MAD, its UR contractor, the MCO or their designees or another MAD designees and the claimant or the claimant's authorized representative, designated spokesperson or legal counsel respectively;

(5) the ALJ may direct further questions to any of the parties to the HSD administrative hearing to clarify inconsistencies or obtain an adequate evidentiary record; and

(6) the ALJ may ask specific parties to summarize and present closing arguments.

C. Points of law: The ALJ may direct the parties who have legal counsel to submit memoranda on points of law to assist the ALJ develop the HSD administrative hearing record and recommendation letter. The ALJ may dictate the length and scope of these submissions.

D. Written closing

argument: At the discretion of the ALJ, the parties may be directed to make closing arguments, or submit written memoranda on points of law.

E. Continuance: The ALJ may, at his or her discretion, continue the HSD administrative hearing upon the request of the parties to the HSD administrative hearing or the ALJ's own motion, to allow for the admission of additional testimony or evidence. The reasons for the continuance must be clearly

stated for the record. Written notice of the date, time, and place of the continued HSD administrative hearing shall be sent to the parties if they are not set at the time of the approval of the continuance.

F. Additional evidence:

If the ALJ requires additional evidence to further clarify documentary evidence presented during the HSD administrative hearing, he or she may close the HSD administrative hearing but keep the record open and direct the parties to submit such clarifying evidence. The assigned ALJ shall provide each party to the HSD administrative hearing with a copy of the direction for further evidence and the documentary evidence to be submitted. Any party may respond to the ALJ's direction, in writing, within 10 calendar days of its receipt of the ALJ's notice. The ALJ will provide the other parties to the HSD administrative hearing a copy of any such submissions and the additional evidence and responses, subject to the ALJ's discretion and appropriate objections by any of the parties to the HSD administrative hearing, shall become part of the HSD administrative hearing record.

G. Re-opening a closed

HSD administrative hearing: The ALJ may at his or her discretion, or subject to an order from a court of competent jurisdiction, or at the request of the MAD director may re-open a closed HSD administrative hearing when the evidentiary record fails to address an issue that is relevant to resolution of the HSD administrative hearing request. Written notice of the date, time and place of the re-opened HSD administrative hearing shall be sent by the ALJ to the parties not less than 10 calendar days before the re-opened HSD administrative hearing. Once the MAD director or designee has issued an HSD administrative final decision, the HSD administrative hearing cannot be re-opened absent an order from a court of competent jurisdiction. A claimant or the claimant's authorized representative may request a new HSD administrative hearing if additional material information becomes available that was not available at the time of the first HSD administrative hearing. The previously assigned ALJ has the discretion to determine if the additional information would necessitate a new HSD administrative hearing.

[8.354.2.15 NMAC - Rp, 8.354.2.13 NMAC, 8/1/14]

8.354.2.16 HSD ADMINISTRATIVE HEARING FINAL DECISION: The final decision concerning the HSD administrative hearing is made by the MAD director or designee after the review of the HSD administrative hearing record and the ALJ's recommendation. If

the ALJ had rendered a decision to dismiss a HSD administrative hearing request, that decision becomes the HSD administrative hearing final decision and the following process detailed in this section of the rule does not apply.

A. Decision based on the record: The ALJ's HSD administrative hearing recommendation must be based solely on the record of the HSD administrative hearing.

B. ALJ recommendation: The ALJ shall review the record of the HSD administrative hearing and submit a complete copy of the record to the MAD director.

(1) Content of the ALJ recommendation: the ALJ shall specify the reasons for his or her conclusions, identifies the supporting evidence, references the pertinent federal and state statutes, regulations, and NMAC rules, and responds to the arguments of the parties within his or her written report.

(2) The ALJ recommends:

(a) in favor of the claimant if MAD, its UR contractor, the MCO or their designee's intended or taken adverse action is not supported by a preponderance of the evidence submitted during the HSD administrative hearing; the ALJ will provide specific recommendations to each appealed adverse action;

(b) in favor of MAD, if the preponderance of evidence submitted during the HSD administrative hearing supports the intended or taken of adverse action or actions; or

(c) any other result supported by the record of the HSD administrative hearing which may be a combination of recommendations for and against the claimant or MAD; if the HSD administrative hearing covered a number of services or components of a service, the ALJ will provide specific recommendations to each intended or taken adverse action.

C. Review of the record: The record of the HSD administrative hearing and the report and recommendation of the ALJ is reviewed by the MAD director or designee to ensure conformity with applicable federal and state statutes, regulations, and rules.

D. Final decision: The ALJ's recommendation may be adopted or rejected in a final written decision by the MAD director or designee on issues that were the subject of the HSD administrative hearing. The MAD director's final decision letter shall specify the reasons for his or her decision and identify the regulatory authority and those portions of the record, applicable federal and state law, rules and policies or any combination of these that support the final decision. No person who participated during the HSD administrative

hearing process may participate in arriving at a HSD administrative hearing final decision.

E. Notice to parties:

MAD shall promptly provide all parties with a copy of the HSD administrative hearing final written decision. When the claimant is represented by legal counsel or an authorized representative, each must receive a copy of the final decision. The HSD administrative hearing final decision letter shall include an explanation that the parties have exhausted all HSD administrative remedies and a claimant or the claimant's authorized representative may pursue judicial review of this decision. [8.354.2.156 NMAC - Rp, 8.354.2.14 NMAC, 8/1/14]

8.354.2.17 CONTINUATION OF BENEFITS PURSUANT TO A TIMELY APPEAL AND A HSD ADMINISTRATIVE HEARING PROCEEDING:

The HSD administrative hearing final decision is binding on all issues that have been the subject of the HSD administrative hearing as to the claimant unless stayed by either a court order or by the MAD director or designee. MAD is responsible for ensuring that the HSD administrative hearing final decision is fulfilled.

A. If the claimant is a member and he or she received a benefit under his or her approved continuation of the benefit and the decision is favorable to the MCO, the claimant's MCO will not take action to file a repayment claim to the claimant or the claimant's authorized representative for the services received during the HSD administrative hearing process up to the date of the HSD administrative hearing final decision.

B. If the claimant is not enrolled in an MCO and the HSD administrative hearing final decision is favorable to MAD, MAD will not take action to file a repayment claim to the claimant or the claimant's authorized representative for the services received during the HSD administrative hearing process up to the date of the HSD administrative hearing final decision.

C. When the HSD administrative hearing final decision is favorable to the claimant, MAD, its UR contractor, the MCO or their designees will authorize the benefit and coverage set forth in the HSD administrative hearing final decision. [8.354.2.17 NMAC - Rp, 8.354.2.10 NMAC, 8/1/14]

8.354.2.18 IMPLEMENTATION OF THE HSD ADMINISTRATIVE FINAL DECISION: The HSD administrative hearing final decision is

binding on all issues that have been the subject of the HSD administrative hearing as to the claimant unless stayed by either a court order or by the MAD director or designee. MAD is responsible for ensuring that the HSD administrative hearing final decision is fulfilled.

A. If the claimant is a member and he or she received a benefit under his or her approved continuation of the benefit and the decision is favorable to the MCO, the claimant's MCO will not take action to file a repayment claim to the claimant or the claimant's authorized representative for the services received during the MCO appeal and the HSD administrative hearing process up to the date of the HSD administrative hearing final decision.

B. If the claimant is not enrolled in an MCO and the HSD administrative hearing final decision is favorable to MAD, its UR contractor or designee, MAD will not take action to file a repayment claim to the claimant or the claimant's authorized representative for the services received during the HSD administrative hearing process up to the date of the HSD administrative hearing final decision.

C. When the HSD administrative hearing final decision is favorable to the claimant, MAD, its UR contractor, the MCO or their designee will authorize the benefit and coverage set forth in the HSD administrative hearing final decision. [8.354.2.18 NMAC - Rp, 8.354.2.15 NMAC, 8/1/14]

8.354.2.19 JUDICIAL APPEAL:

If the HSD administrative hearing final decision upholds MAD, its UR contractor, the MCO or their designee's intended or taken adverse action, the claimant or the claimant's authorized representative has the right to pursue judicial review of the HSD administrative hearing final decision and is notified of that right in the HSD administrative final decision letter. Judicial appeals for the HSD administrative hearing final decision are governed by New Mexico statutes and court rules. While the following subsections highlight applicable procedures, they should not be considered a substitute for examining the statutes and rules themselves.

A. Jurisdiction: Administrative appeals for a claimant are governed by the Section 39-3-1.1 NMSA 1978 and by Rule 1-074, Rules of Civil Procedures for the district courts.

B. Timeliness: Unless otherwise provided by law, a claimant or the claimant's authorized representative must appeal the HSD administrative hearing final decision within 30 calendar days of the date

of the HSD administrative hearing final decision by filing a notice of appeal with the clerk of the appropriate New Mexico district court.

C. Jurisdiction and standard of review: All judicial appeals are based on the record made at the HSD administrative hearing, and in accordance with state statute and court rules. HSD files a copy of the HSD administrative hearing record with the court clerk and furnishes one copy to the claimant or the claimant's authorized representative and if applicable, his or her legal counsel within 30 calendar days after receipt of the notice of appeal. The court may set aside the HSD administrative hearing final decision if it finds the decision is:

- (1) arbitrary, capricious, or an abuse of discretion;
- (2) is not supported by substantial evidence in the record as a whole; or
- (3) is otherwise not in accordance with the applicable law, statutes or rules.

D. Benefits pending state district court appeal: The filing of a notice of appeal shall not stay the enforcement of the HSD administrative hearing final decision. The claimant or the claimant's authorized representative may seek a stay upon a motion to the court or the claimant may request the MAD director or designee to stay the HSD administrative hearing final decision while the adverse action is on appeal in a New Mexico district court. If the court orders a stay, MAD, its UR contractor, the MCO or their designee will maintain the benefit at issue in accordance with the state district court's order. If the New Mexico district court's final decision is in favor of MAD, its UR contractor, the MCO or their designee and the claimant continued utilizing his or her benefit during the district court appeal process, see 8.352.2 NMAC for the repayment process.

[8.354.2.19 NMAC - Rp, 8.354.2.16 NMAC, 8/1/14]

HISTORY OF 8.354.2 NMAC:

History of Repealed Material:
8.354.2 NMAC, PASRR and Patient Status Hearings, filed 02/17/2012 - Repealed effective 08/01/2014.

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.308.12 NMAC, Sections 7, 9 thru 21 effective August 1, 2014.

8.308.12.7 DEFINITIONS:

A. Agency based community benefit (ABCB): The community benefit (CB) services offered to a member who does not wish to self-direct his or her CB services.

B. ABCB care plan: For a member who is participating in the ABCB approach, the care plan outlines the specific community benefit services that the member and the care coordinator have identified as needed services through the comprehensive needs assessment (CNA).

~~C. Authorized agent: The individual that has been legally appointed by the appropriate court to act on behalf of the eligible recipient as stated in the court's order. The member's authorized agent may be a service provider (depending on the scope of the court's order) for the member.]~~

~~[D] C. Authorized representative: [The member may choose to appoint an authorized representative designated to have access to medical, behavioral health and financial information for the purpose of offering support and assisting the eligible recipient in understanding his or her community benefit services. The eligible recipient may designate a person to act as an authorized representative by signing a release of information form indicating his or her consent to the release of confidential information. The authorized representative will not have the authority to direct the member's community benefit services, which remains the sole responsibility of the member or his or her authorized agent. The member's authorized representative does not need a legal relationship with the member. The authorized representative cannot serve as the member's support broker.] The individual designated to represent and act on the member's behalf. The member or authorized representative must provide formal documentation authorizing the named individual or individuals to access the identified case information for a specified purpose and time frame. An authorized representative may be an attorney representing a person or household, a person acting under the authority of a valid power of attorney, a guardian, or any other individual or individuals designated in writing by the member.~~

[E] D. Budget: The maximum budget allotment available to a self-directed

community benefit (SDCB) member, determined by his or her CNA. Based on this maximum amount, the eligible member will develop a care plan in collaboration with their support broker to meet his or her assessed functional, medical and habilitative needs to enable that member to remain in the community.

[F] E. Care coordinator: The care coordinator provides care coordination activities that comply with all state and federal requirements. This includes, but is not limited to: assigning an appropriate care coordination level; performing a CNA a minimum of annually to determine physical, behavioral and long-term care needs; developing a budget based on those needs; and delivering on-going care coordination services based on the member's assessed need and in accordance with the care plan and contractual obligations.

[G] E. Comprehensive care plan: A comprehensive plan that includes community benefit services that meet the member's long-term, physical and behavioral health care needs which must include, but is not limited to: the amount, frequency and duration of the community benefit services, the cost of goods and services; the type of provider who will furnish each service; other services the member will access; and the member's available supports that will complement community benefit services in meeting the [individual's] member's needs. The member works with his or her care coordinator, support broker or both to develop a care plan which is submitted to the managed care organization (MCO) for review and approval.

[H] G. Comprehensive needs assessment (CNA): The comprehensive needs assessment will be conducted in person, in the member's primary place of residence, by the MCO care coordinator for a member who is assigned a care coordination level of two or three. The CNA will assess the physical, behavioral health, and long-term care needs; identify potential risks and provide social and cultural information. The results of the CNA will be used to create the care plan which is based on the member's assessed needs.

[I] H. Eligible member: ~~[An individual who has been deemed medically and financially eligible and through the EOR self-assessment instrument, has either been deemed able to be their own EOR or must assign EOR duties to another eligible individual. A member must continue to meet medical and financial eligibility to continue accessing community benefits.]~~ A MAP enrolled MCO member who meets a specific level of care (LOC) selects to receive his or her MCO community benefits either through the ABCB or the

SDCB approach. The eligible member must continue to meet a specific LOC and financial eligibility to continue accessing his or her MCO community benefits.

[F] I. Employer of record (EOR): ~~[The employer of record is the individual responsible for directing the work of SDCB employees, including recruiting, hiring, managing and terminating all employees. The EOR tracks expenditures for employee payroll, goods, and services. EORs authorize the payment of timesheets by the financial management agency (FMA). A member may be his or her own EOR unless the member is a minor, or has a plenary or limited guardianship or conservatorship over financial matters in place. A member may also designate an individual of his or her choice to serve as the EOR, subject to the EOR meeting the qualifications specified in this rule.]~~ The employer of record is the individual responsible for directing the work of the member's SDCB employees, including recruiting, hiring, managing and terminating all employees. The EOR tracks expenditures for employee payroll, goods, and services. The EOR authorizes the payment of timesheets by the financial management agency (FMA). A member through the use of the EOR self-assessment instrument is either deemed able to be his or her own EOR or the member must assign the EOR duties to another eligible individual meeting specific EOR qualifications. A member who is a minor or has a MAD recognized authorized representative is not able to be his or her own EOR; see Subsection C of 8.308.7 NMAC.

[K] J. Financial management agency (FMA): An entity that contracts with a HSD MCO to provide the fiscal administration functions for members participating in the SDCB approach.

[E-] K. Legally responsible individual (LRI): A legally responsible individual is any person who has a duty under state law to care for another person. This category typically includes: the parent (biological, legal, or adoptive) of a minor child; the guardian of a minor child who must provide care to the child; or a spouse.

[M] L. The level of care (LOC): A member must meet a specific LOC to be eligible for a specific community benefit service.

[N] M. Self-directed community benefit (SDCB): The ~~[community benefit] CB~~ services offered to a member who is able to and who chooses to self-direct his or her CB services.

[O-] N. SDCB care plan: For a member who selected the SDCB approach, the care plan is the services that the member and the support broker have identified through the CNA that will be purchased with the member's budget.

[P] O. Support broker: The function of the support broker is to directly assist the member in implementing the care plan and budget to ensure access to SDCB services and supports and to enhance success with self-direction. The support broker's primary function is to assist the member with employer or vendor related functions and other aspects of implementing his or her care plan and budget.

[8.308.12.7 NMAC - N, 1-1-14; A, 8-1-14]

8.308.12.9 MANAGED CARE COMMUNITY BENEFIT OPTIONS:

A MCO member, meeting a specific LOC, can select the approach to receiving his or her community benefit services. The MCO offers two approaches to the delivery of these services: agency based (ABCB) or self-directed (SDCB). The MCO shall use the nursing facility (NF) LOC criteria for determining medical eligibility for community benefits.

[8.308.12.9 NMAC - N, 1-1-14; A, 8-1-14]

8.308.12.10 AGENCY BASED COMMUNITY BENEFIT (ABCB):

The MCOs shall offer the ABCB approach to its member who meets the ~~[nursing facility (NF)] NF~~ LOC and is determined through a CNA or reassessment to need MCO ~~[community benefit] CB~~ services. Although a member's assessment for the amount and types of services may vary, ABCB services are not provided 24 hours per day. A member has the option of choosing the ABCB or the SDCB approach. A member cannot participate in both community benefit approaches concurrently.

[8.308.12.10 NMAC - N, 1-1-14; A, 8-1-14]

8.308.12.11 ELIGIBLE ABCB PROVIDERS:

All ABCB agencies must apply and be approved to be a MAD provider and must then contract with any or all approved MCOs. A complete listing of all CB provider qualifications and responsibilities are detailed in the MAD MCO policy manual.

[8.308.12.11 NMAC - N, 1-1-14, 8-1-14]

8.308.12.12 ELIGIBLE ABCB MEMBERS:

~~[Enrollment in ABCB is contingent upon the member meeting the eligibility requirements as described in the New Mexico Administrative Code (NMAC) eligibility rules.]~~ A member must meet NF LOC and be determined through a CNA or reassessment to need MCO CB services.

[8.308.12.12 NMAC - N, 1-1-14; A, 8-1-14]

8.308.12.13 COVERED SERVICES IN AGENCY BASED COMMUNITY BENEFIT (ABCB):

A. Adult day health: adult day health services provide structured therapeutic, social and rehabilitative

services designed to meet the specific needs and interests of a member that are incorporated into the member's care plan.

(1) Adult day health services are provided by a licensed community-based adult day-care facility that offers health and social services to assist a member to achieve his or her optimal functioning.

(2) Private duty nursing services and skilled maintenance therapies (physical, occupational and speech) may be provided within the adult day health setting and in conjunction with adult day health services but would be reimbursed separately from his or her adult day health services.

B. Assisted living is a residential service that provides a homelike environment, which may be in a group setting, with individualized services designed to respond to the member's needs as identified and incorporated in the care plan.

(1) Core services are a broad range of activities of daily ~~[(ADL)]~~ living (ADL) including: personal support services (homemaker, chore, attendant services, meal preparation); companion services; medication oversight (to the extent permitted under state law); 24-hour on-site response capability: (a) to meet scheduled or unpredictable member's needs, and (b) to provide supervision, safety, and security.

(2) Services include social and recreational programming. Coverage does not include 24-hour skilled care or supervision or the cost of room or board. Nursing and skilled therapy services are incidental, rather than integral to, the provision of assisted living services. Services provided by third parties must be coordinated with the assisted living provider.

C. Behavior support consultation is the provision of assessment, treatment, evaluation and follow-up services to assist the member, his or her parents, family, and primary caregivers with coping skills which promote maintaining the member in a home environment.

(1) Behavior support consultation: (a) informs and guides the member's paid and unpaid caregivers about the services and supports that relate to the member's medical and behavioral health condition;

(b) identifies support strategies for a member that ameliorate contributing factors with the intention of enhancing functional capacities, adding to the provider's competency to predict, prevent and respond to interfering behavior and potentially reducing interfering behavior;

(c) supports effective implementation based on a member's functional assessment;

(d) collaborates with medical and ancillary therapists to promote coherent

and coordinated services addressing behavioral issues and to limit the need for psychotherapeutic medications; and

(e) monitors and adapts support strategies based on the response of the member and his or her service and support providers.

(2) Based on the member's care plan, services are delivered in an integrated, natural setting or in a clinical setting.

D. Community transition services are non-recurring set-up expenses for a member who is transitioning from an institutional or another provider-operated living arrangement (excluding assisted living) to a living arrangement in a private residence where the member is directly responsible for his or her own living expenses.

(1) Allowable expenses are those necessary to enable the member to establish a basic household that does not constitute room and board and may include:

(a) security deposits that are required to obtain a lease on an apartment or home;

(b) essential household furnishings required to occupy and use a community domicile, including furniture, window coverings, food preparation items, and bed and bath linens;

(c) set-up fees or deposits for utility or service access, including telephone, electricity, heating and water;

(d) services necessary for the member's health and safety, such as, but not limited to, pest eradication and one-time cleaning prior to occupancy; and

(e) moving expenses.

(2) Community transition services do not include monthly rental or mortgage expense, food, regular utility charges, household appliances, or items that are intended for purely diversional or recreational purposes.

(3) Community transition services are limited to \$3,500 per member every five years. In order to be eligible for this service, the member must have a NF stay of at least 90-consecutive days prior to transition to the community.

E. Emergency response services provide an electronic device that enables a member to secure help in an emergency at his or her home, avoiding institutionalization. The member may also wear a portable "help" button to allow for mobility. The system is connected to the member's phone and programmed to signal a response center when the "help" button is activated. The response center is staffed by trained professionals. Emergency response services include: testing and maintaining equipment; training the member, his or her caregivers and first responders on use of the equipment; 24-hour monitoring for alarms; checking systems monthly or

more frequently (if warranted by electrical outages, severe weather, etc.); and reporting member emergencies and changes in the member's condition that may affect service delivery.

F. Employment supports include job development, job seeking and job coaching supports after available vocational rehabilitation supports have been exhausted.

(1) The job coach provides: (a) training, skill development; (b) employer consultation that a member may require while learning to perform specific work tasks on the job; (c) co-worker training; (d) job site analysis; (e) situational and vocational assessments and profiles; (e) education of the member and co-workers on rights and responsibilities; and (f) benefits counseling. The service must be tied to a specific goal in the member's care plan.

(2) Job development is a service provided to a member by skilled staff. The service has five components:

(a) job identification and development activities;

(b) employer negotiations;

(c) job restructuring;

(d) job sampling; and

(e) job placement.

(3) Employment supports are provided by staff at current or potential work sites. When supported employment services are provided at a work site where persons without disabilities are employed, payment is made only for the adaptations, supervision and training required by the member receiving services as a result of his or her disabilities, and does not include payment for the supervisory activities rendered as a normal part of the business setting.

(4) Payment shall not be made for incentive payments, subsidies, or unrelated vocational training expenses such as the following:

(a) incentive payments made to an employer to encourage or subsidize the employer's participation in a supported employment program;

(b) payments that are passed through to users of supported employment programs; or

(c) payments for training that is not directly related to [an] a member's supported employment program.

(5) Federal financial participation cannot be claimed to defray expenses associated with starting up or operating a business.

G. Environmental modification services include: the purchase of, the installation of equipment for the physical adaptations to a member's residence that are necessary to ensure the health, welfare, and safety of the member or enhance the member's level of

independence.

(1) Adaptations include the installation of:

(a) ramps and grab-bars;

(b) widening of doorways and hallways;

(c) installation of specialized electric and plumbing systems to accommodate medical equipment and supplies;

(d) lifts and elevators;

(e) modification of bathroom facilities (roll-in showers, sink, bathtub, and toilet modifications, water faucet controls, floor urinals and bidet adaptations and plumbing);

(f) turnaround space adaptations;

(g) specialized accessibility/safety adaptations/additions;

(h) trapeze and mobility tracks for home ceilings;

(i) automatic door openers/doorbells;

(j) voice-activated, light-activated, motion-activated and electronic devices;

(k) fire safety adaptations; air filtering devices;

(l) heating and cooling adaptations;

(m) glass substitute for windows and doors; modified switches, outlets or environmental controls for home devices; and

(n) alarm and alert systems, including signaling devices.

(2) All services shall be provided in accordance with applicable federal and state statutes, regulations and ~~rules~~ rules and local building codes.

(3) Non-covered adaptations or improvements to the member's home:

(a) general utility which are not for direct medical or remedial benefit to the member; and

(b) adaptations that add to the total square footage of the member's resident except when necessary to complete an approved adaptation.

(4) The environmental modification provider must:

(a) ensure proper design criteria is addressed in planning and design of the adaptation;

(b) provide or secure the appropriate licensed contractor or approved vendor to provide construction and remodeling services;

(c) provide administrative and technical oversight of construction projects;

(d) provide consultation to family enrollees, providers and contractors concerning environmental modification projects to the member's residence; and

(e) inspect the final environmental modification project to ensure that the adaptations meet the approved plan

submitted for environmental adaptation.

(5) Environmental modification services to a member are limited to \$5,000 every five years. Additional services may be requested if the member's health and safety needs exceed the specified limit.

H. Home health aide services provide total care or assist the member in all ADLs.

(1) Total care includes: the provision of bathing (bed, sponge, tub, or shower); shampoo (sink, tub, or bed); care of nails and skin; oral hygiene; toileting and elimination; safe transfer techniques and ambulation; normal range of motion and positioning; and adequate oral nutrition and fluid intake.

(2) The home health aide services assist the member in a manner that promotes an improved quality of life and a safe environment for him or her. Home health aide services are intermittent and provided primarily on a short-term basis; whereas, ~~[community benefit]~~ CB home health aide services are provided hourly, for ~~[eligible beneficiaries]~~ members who need this service on a more long term basis. Home health aide services can be provided outside the member's home.

(3) Home health aides may provide basic non-invasive nursing assistant skills within the scope of their practice. Home health aides perform an extension of therapy services:

- (a) bowel and bladder care;
- (b) ostomy site care;
- (c) personal care;
- (d) ambulation and exercise;
- (e) household services essential to health care at home;
- (f) assisting with medications that are normally self-administered;
- (g) reporting changes in patient conditions and needs; and
- (h) completing appropriate records.

(4) Home health aide services must be provided under the supervision of a registered nurse (RN) licensed by the New Mexico board of nursing, or other appropriate professional staff. Such staff must make a supervisory visit to the member's residence at least every two weeks to observe and determine whether the member's goals are being met.

I. Personal care services (PCS) are provided to a member unable to perform a range of ADLs and instrumental activities of daily living (IADL). PCS shall not replace natural supports such as the member's family, friends, individuals in the community, clubs, and organizations that are able and consistently available to provide support and service to the member.

(1) PCS is a benefit for a member 21 years of age or older who does not receive other MAD waiver services and

who meets the eligibility for CB services. A member must have a current CNA that specifically states PCS is an appropriate CB service: A member under 21 years of age can access his or her PCS through the EPSDT program.

(2) PCS delivery models: A member ~~[who has selected consumer-delegated as his or her delivery model]~~ may select either the consumer-delegated or the consumer-directed delivery of his or her PCS. The PCS consumer-delegated or consumer directed agency must be certified as such by MAD or its designee to perform such duties and to be reimbursed for the delivery model of those services. The MCO's care coordinator is responsible for explaining both models to each member, initially, and annually thereafter.

(a) The consumer delegated (PCS/ CDelegated) model allows the member to select his or her PCS agency to perform all PCS employer-related tasks. This agency is responsible for ensuring all PCS are delivered to the member.

(b) The consumer-directed (PCS/ CDirected) model allows the member to oversee his or her own PCS delivery, and requires that the member to work with his or her PCS agency who then acts as a fiscal intermediary agency to ~~[processing]~~ process all financial paperwork to be submitted to the MCO.

(c) A member who is unable to select or who is unable to communicate which PCS delivery model he or she selects, his or her authorized ~~[agent]~~ representative will then select and participate on behalf of the member. The member's authorized ~~[agent]~~ representative status must be properly documented with the member's PCS agency.

(d) For both models, the member may select his or her family member, with the exception of the member's spouse; a friend; neighbor; or other person as his or her PCS attendant. However, his or her family member shall not be reimbursed for a service he or she would have otherwise provided as a natural support. A PCS attendant, regardless of family relationship, who resides with the member shall not be paid to deliver household services, or supports such as shopping, errands, or meal preparation that are routinely provided as part of the household division of chores, unless those services are specific to the member. Services include, but are not limited to, cleaning ~~[consumer's]~~ member's room, linens, clothing, and special diets.

(e) ~~[A member may have an authorized representative to assist him or her to give instruction to the attendant or to provide information to the MCO during assessments of the member's natural services, or supports needs. An authorized representative does not have the same level~~

of responsibility or access as an authorized agent yet the same person may fill both responsibilities:

~~_____ (i) An authorized representative must have the following qualifications: be at least 18 years of age, have a personal relationship with the member and understand the member's natural services, or supports needed, and know the member's daily schedule and routine including medications, medical and functional status, likes and dislikes, strengths and weaknesses.~~

~~_____ (ii) An authorized representative does not make decisions for the member unless he or she is also the member's authorized agent. He or she may assist the member in communicating, as appropriate. An authorized representative may not be the member's attendant, unless he or she is also the authorized agent and has obtained written approval from the member's MCO. The authorized representative status must be properly documented with the member's PCS agency.] A member may have a relative, friend, or other spokesperson assisting him or her communicating information or instructions to the member's attendant, provide information concerning the member's natural services or supports needs during the member's assessment, or fulfill additional roles as designated by the member or the member's authorized representative in writing. A spokesperson may not make decisions on behalf of a member, which is the member or member's authorized representative's sole responsibility, unless the member's authorized representative is also the member's spokesperson.~~

(3) Eligible PCS agencies: PCS agencies electing to provide PCS must obtain agency certification. A PCS agency provider, must comply with the requirements as listed in the MAD managed care policy manual as of the date of application for certification. PCS agencies must be an enrolled MAD provider.

(4) Bladder and bowel care: PCS must be related to the member's functional level to perform ADLs and IADLs as indicated in the members CNA. PCS will not include those services, or supports the member does not need or is already receiving from other sources including tasks provided by natural supports.

(a) A member who has a signed statement by his or her primary care provider (PCP) stating he or she is medically stable and able to communicate and assess his or her bladder and bowel care needs may access this service when included in his or her individual care plan.

(i) bowel care includes the evacuation and ostomy care, changing and cleaning of such bags and ostomy site

skin care;

(ii) bladder care includes the attendant cueing the member to empty his or her bladder at timed intervals to prevent incontinence; and

(iii) catheter care, including the changing and cleaning of such bag.

(b) A member who is determined by his or her PCP in a signed statement to not be medically stable and not able to communicate and assess his or her bladder and bowel care needs may access these services:

(i) perineal care including cleansing of the perineal area and changing of feminine sanitary products;

(ii) toileting including assisting with bedside commode or bedpan; (iii) cleaning perineal area,

(iv) changing adult briefs or pads;

(v) cleaning changing of wet or soiled clothing; and

(vi) assisting with adjustment of clothing before and after toileting.

(5) Meal preparation and assistance: Meal preparation includes cutting ingredients to be cooked, cooking meals, placing and presenting the meal in front of the member to eat, cutting up food into bite-sized portions for the member, or assisting the member as stated in his or her [HPoC] individual plan of care (IPOC). This includes provision of snacks and fluids and may include mobility assistance and prompting or cueing the member to prepare meals.

(a) An attendant who resides in the same household as the member may not be paid for meal preparation routinely provided as part of the household division of chores, unless those services are specific to the member, such as special diets, processing of meals into edible portions, or pureeing.

(b) When two or more members are residing in the same residence, services and supports will be assessed both independently and jointly to determine the level and amount of service and support that is shared. Services and supports will be approved based ~~only~~ on common needs and not only the member's needs. If determined by the members' PCS agency that he or she needs individualized service or support the MCO will include the services or supports in the member's IPOC.

(6) Eating: Feeding or assisting the member with eating a prepared meal using a utensil or specialized utensils is a covered service. Eating assistance may include mobility assistance and prompting or cueing a member to ensure appropriate nutritional intake and monitor for choking.

If the member has special needs in this area, the PCS agency will include specific instruction in the member's IPOC on how to meet those needs. Gastrostomy feeding and tube feeding are not covered services.

(7) Household support services: This service is for assisting and performing interior household activities and other support services that provide additional assistance to the member. Interior household activities are limited to the upkeep of the member's personal living areas to maintain a safe and clean environment for the member, particularly a member who may not have adequate support in his or her residence. Assistance may include mobility assistance and prompting and cueing a member to ensure appropriate household support services.

(a) An attendant who resides in the same household as the member may not be paid for household support services routinely provided as part of the household division of chores, unless those services are specific to the member such as, changing the member's linens, and cleaning the member's personal living areas.

(b) When two or more members are residing in the same residence, services and supports will be assessed both independently and jointly to determine the level and amount of service and support that is shared. Services and supports will be approved based on common needs and not on the member's needs. If determined by the members' PCS agency that he or she needs individualized service or support the MCO will include the services or supports in the member's IPOC.

(c) Services include:

(i) sweeping, mopping, or vacuuming

(ii) dusting furniture;

(iii) changing linens;

(iv) washing laundry;

(v) cleaning bathrooms includes tubs, showers, sinks, and toilets;

(vi) cleaning the kitchen and dining area including washing dishes, putting them away; cleaning counter tops, and eating areas, etc.; household services do not include cleaning up after other household members or pets;

(vii) minor cleaning of an assistive device, wheelchair and durable medical equipment (DME) is a covered service. A member must have an assistive device requiring regular cleaning that cannot be performed by the member and is not cleaned regularly by the supplier of the assistive device to be eligible to receive services under this category;

(viii) shopping or completing errands specific to the member with or without the member;

(ix) cueing a member to feed and hydrating his or her documented

personal assistance animal or feed and hydrate such an animal when the member is unable;

(x) assistance with battery replacement and minor, routine wheelchair and DME maintenance is a covered service; a member must have an assistive device that requires regular maintenance, that is not already provided by the supplier of the assistive device, and that the member cannot maintain in order to be eligible to receive services under this category;

(xi) assisting a member self-administering: assistance with self-administering physician ordered (prescription) medications is limited to prompting and reminding only; the use of over the counter medications does not qualify for this service; a [consumer] member must meet the definition of "ability to self-administer" defined in this section, to be eligible to receive time for this task; a [consumer] member who does not meet the definition of ability to self-administer is not eligible for this service; this assistance does not include administration of injections, which is a skilled/nursing task; splitting or crushing medications or filling medication boxes is not a covered service; assistance includes: getting a glass of water or other liquid as requested by the [consumer] member for the purpose of taking medications; at the direction of the [consumer] member, handing the [consumer] member his or her daily medication box or medication bottle; and at the direction of the [consumer] member, helping a [consumer] member with placement of oxygen tubes for [consumers] members who can communicate to the caregiver the dosage or route of oxygen; and

(xii) transportation of the [consumer] member: transportation shall only be for non-medically necessary events and may include assistance with transfers in and out of vehicles; medically necessary transportation services may be a covered PCS service when the MCO has assessed and determined that other medically necessary transportation services are not available through other state plan services.

(8) Hygiene and grooming: The attendant may perform for the member or the attendant may cue and prompt the member to perform the following services:

(a) bathing to include giving a sponge bath in the member's bed, bathtub or shower; transferring in and out of the bathtub or shower, turning water on and off; selecting a comfortable water temperature; bringing in water from outside or heating water for the member;

(b) dressing to include putting on, fastening, and removing clothing including

shoes;

(c) grooming to include combing or brushing hair, applying make-up, trimming beard or mustache, braiding hair, shaving under arms, legs or face;

(d) oral care for a member with intact swallowing reflex to include brushing teeth, cleaning dentures or partials including the use of floss, swabs, or mouthwash;

(e) nail care to include cleaning, filing to trim, or cuticle care for member's without a medical condition. For a documented medically at-risk member; nail care is not a covered under PCS; it is a skilled nurse service. Medically at risk conditions include, but are not limited to [covenous] venous insufficiency, diabetes, peripheral neuropathy;

(f) applying lotion or moisturizer to intact skin for routine skin care;

(g) physician ordered skin care is limited to the application of skin cream when a member has a documented chronic skin condition and is determined by his or her PCP unable to self administer the medication. The member's PCP must order a prescription or over-the-counter medication to treat the condition.

(i) When the PCP determines the member is able to self administer the prescribed or over-the-counter medication the attendant is limited to prompting and reminding the member.

(ii) PCS does not include the care of a member's wounds, open sores, debridement or dressing of open wounds.

(h) prompting or cueing to ensure appropriate bathing, dressing, grooming, oral care, nail care and application of lotion for routine skin care; and

(i) mobility assistance to ensure appropriate bathing, dressing, grooming, oral care and skin care.

(9) Supportive mobility assistance: Physical or verbal prompting and cueing mobility assistance provided by the attendant that are not already included as part of other PCS includes assistance with:

(a) ambulation to include moving around inside or outside the member's residence or living area with or without an assistive device such as a walker, cane or wheelchair;

(b) transferring to include moving to and from one location or position to another with or without an assistive [devices] device such as in and out of a vehicle;

(c) toileting to include transferring on or off a toilet; and

(d) repositioning to include turning or changing a bed-bound member's position to prevent skin breakdown.

(10) Non-covered services: The following services are not covered as PCS:

(a) services to an inpatient or resident of a hospital, NF, ICF-IID, mental health facility, correctional facility, or other institutional settings, with the exception when a member is transitioning from a NF;

(b) services that are already provided by other sources, including natural supports;

(c) household services, support services such as shopping, errands, or meal preparation that are routinely provided as part of the household division of chores;

(d) services provided by a person not meeting the requirements and qualifications of a personal care attendant; including but not limited to, training and criminal background checks;

(e) services not approved in the member's IPoC;

(f) childcare, pet care, or personal care for other household members. This does not include the member's documented assistant service animal;

(g) retroactive services;

(h) services provided to [a] an individual who is not a MCO member or does not meet the eligibility criteria for CB services;

(i) member assistance with finances and budgeting;

(j) member appointment scheduling;

(k) member range of motion exercises;

(l) wound care of open sores and debridement or dressing of open wounds;

(m) filling of medication boxes, cutting or grinding pills, administration of injections, assistance with over-the-counter medication or medication that the member cannot self-administer;

(n) skilled nail care for a member documented as medically at-risk;

(o) medically necessary transportation when available through the member's MCO general benefit services;

(p) bowel and bladder services that include insertion or extraction of a catheter or digital stimulation; and

(q) gastrostomy feeding and tube feeding.

J. Private duty nursing services include activities, procedures, and treatment for a physical condition, physical illness, or chronic disability for a member who is 21 years of age and older with intermittent or extended direct nursing care in his or her home.

(1) Services include:

(a) medication management;

(b) administration and teaching;

(c) aspiration precautions;

(d) feeding tube management;

(e) gastrostomy and jejunostomy;

(f) skin care;

(g) weight management;

(h) urinary catheter management;

(i) bowel and bladder care;

(j) wound care;

(k) health education;

(l) health screening;

(m) infection control;

(n) environmental management

for safety;

(o) nutrition management;

(p) oxygen management;

(q) seizure management and

precautions;

(r) anxiety reduction;

(s) staff supervision; and

(t) behavior and self-care

assistance.

(2) All services provided under a written physician's order and must be rendered by New Mexico board of nursing licensed RN or a licensed practical nurse (LPN) who provides services within his or her scope of practice.

K. Respite services are provided to a member unable to care for him or herself and are furnished on a short-term basis to allow the member's unpaid primary caregiver a limited leave of absence in order to reduce stress, accommodate a caregiver illness, or meet a sudden family crisis or emergency.

(1) Respite care is furnished at home, in a private residence of a respite care provider, in a specialized foster care home, in a hospital or NF, that meet the qualifications for MAD provider enrollment requirements. For purposes of ABCB eligibility, when respite services are delivered through an institutional provider, the member is not considered a resident of the institution.

(2) Respite care services include:

(a) medical and non-medical health care;

(b) personal care; bathing;

(c) showering; skin care;

(d) grooming;

(e) oral hygiene;

(f) bowel and bladder care;

(g) catheter and supra-pubic catheter care;

(h) preparing or assisting in preparation of meals and eating;

(i) administering enteral feedings;

(j) providing home management skills;

(k) changing linens;

(l) making beds;

(m) washing dishes;

(n) shopping; errands;

(o) calls for maintenance;

(p) assisting with enhancing

self-help skills, such as promoting use of appropriate interpersonal communication skills and language, working independently without constant supervision or observation;

(q) providing body positioning, ambulation and transfer skills;

(r) arranging for transportation to

medical or therapy services;

(s) assisting in arranging health care needs and follow-up as directed by primary care giver, physician, and care coordinator; and

(t) ensuring the health and safety of the member at all times.

(3) Respite may be provided on either a planned or an unplanned basis and may be provided in a variety of settings. If unplanned respite is needed, the appropriate agency personnel will assess the situation, and with the caregiver, recommend the appropriate setting for respite services to the member. Services must only be provided on an intermittent or short-term basis because of the absence or need for relief of those persons normally providing care to the member.

(4) Respite services are limited to a maximum of 100 hours annually per care plan year provided there is an unpaid primary caretaker. Additional hours may be requested if a member's health and safety needs exceed the specified limit.

L. Skilled maintenance therapy services for a member 21 years and older are provided when his or her MCO's general skilled therapy services are exhausted or not a covered MCO's benefit. The community benefit skilled maintenance therapy services include physical therapy, occupational therapy or speech language therapy. Therapy services focus on improving functional independence, health maintenance, community integration, socialization, and exercise, and enhance the support and normalization of the member's family relationships.

(1) Physical therapy services promote gross and fine motor skills, facilitate independent functioning and prevent progressive disabilities. Specific services may include but are not limited to:

(a) professional assessment, evaluation and monitoring for therapeutic purposes;

(b) physical therapy treatments and interventions;

(c) training regarding PT activities;

(d) use of equipment and technologies or any other aspect of the member's physical therapy services;

(e) designing, modifying or monitoring use of related environmental modifications;

(f) designing, modifying, and monitoring use of related activities supportive to the care plan goals and objectives; and

(g) consulting or collaborating with other service providers or family enrollees, as directed by the member.

(2) Occupational therapy (OT) services promote fine motor skills, coordination, sensory integration, and

facilitate the use of adaptive equipment or other assistive technology. Specific services may include but are not limited to:

(a) teaching of daily living skills;

(b) development of perceptual

motor skills and sensory integrative functioning;

(c) design, fabrication, or modification of assistive technology or adaptive devices;

(d) provision of assistive technology services;

(e) design, fabrication, or applying selected orthotic or prosthetic devices or selecting adaptive equipment;

(f) use of specifically designed crafts and exercise to enhance function; training regarding OT activities; and

(g) consulting or collaborating with other service providers or family enrollees, as directed by the member.

(3) Speech and language therapy (SLT) services preserve abilities for independent function in communication; facilitate oral motor and swallowing function; facilitate use of assistive technology; and prevent progressive disabilities. Specific services may include but are not limited to:

(a) identification of communicative or oropharyngeal disorders and delays in the development of communication skills;

(b) prevention of communicative or oropharyngeal disorders and delays in the development of communication skills;

(c) development of eating or swallowing plans and monitoring their effectiveness;

(d) use of specifically designed equipment, tools, and exercises to enhance function;

(e) design, fabrication, or modification of assistive technology or adaptive devices;

(f) provision of assistive technology services;

(g) adaptation of the member's environment to meet his or her needs;

(h) training regarding SLT activities; and

(i) consulting or collaborating with other service providers or family enrollees as directed by the member.

(4) A signed therapy referral for treatment must be obtained from the member's PCP. The referral will include frequency, estimated duration of therapy and treatment, and procedures to be provided.

[8.308.12.13 NMAC - N, 1-1-14; A, 8-1-14]

8.308.12.14 ABCB NON-COVERED SERVICES: MAD and the member's MCO do not cover certain procedures, services, or miscellaneous items. The member uses his or her MCO

general benefits for non-ABCB services, and these services are not included in the ABCB care plan. See specific MAD NMAC rules, sections of this rule, and the MAD MCO manual for additional information on [service] benefit coverage and limitations.

[8.308.12.14 NMAC - N, 1-1-14; A, 8-1-14]

8.308.12.15 SELF-DIRECTED COMMUNITY BENEFIT (SDCB): The MCO shall offer the SDCB approach to a member who meets a NF LOC and is determined through a [comprehensive needs assessment] CNA or reassessment to need [the community benefit (CB)] CB services. Self-direction affords a member the opportunity to have choice and control over how his or her CB services are provided and who provides the services. Although a member's assessment for the amount and types of services may vary, SDCB services are not provided 24 hours per day. Services are reimbursed according to the MAD [rate] fee schedule that has a range of allowable reimbursement to a provider of a specific service. The member's MCO approves the final reimbursement rate for each provider of a CB service. A member has the option of choosing the ABCB or the SDCB approach. A member cannot participate in both community benefit approaches concurrently.

[8.308.12.15 NMAC - N, 1-1-14; A, 8-1-14]

8.308.12.16 ELIGIBLE PROVIDERS:

A. The FMA, member or his or her EOR shall verify that a potential provider meets all applicable qualifications prior to rendering a service. If a provider or employee is unable to pass a nationwide criminal history screening pursuant to NMSA 1978, 29-12-2 et seq. or is listed in the abuse registry as defined in NMSA 1978, 27-7a-1 et seq., that person may not be employed to render any service to the MCO's member. Following formal approval from the MCO, LRI (including parents of minors), who must provide care to the minor, may serve as a provider under extraordinary circumstances in order to assure the health and welfare of the member and to avoid his or her institutionalization. The MCO shall make decisions regarding [legally responsible LRI] LRLs serving as providers for members on a case by case basis. Following formal approval from the MCO, a spouse of a member may serve as a provider under extraordinary circumstances in order to assure the health and welfare of the member and to avoid institutionalization. The MCO shall provide such approval on a case by case basis.

B. An EOR shall have an employment agreement or vendor agreement with each of the member's

providers. The employee or vendor agreement template shall be prescribed by MAD. Prior to a payment being made to a provider for SDCB services, the FMA shall ensure that: the provider meets all qualifications; and an employee agreement or vendor agreement is signed between the EOR and the provider. A member's [employment] employee agreement shall be updated anytime there is a change in any of the terms or conditions specified in the agreement. [Employment] Employee agreements shall be signed by the new EOR when there is a change in EORs. A copy of each employee agreement or vendor agreement shall be provided to the member and EOR. Refer to the MAD MCO policy manual for a complete listing of all SDCB provider qualifications and responsibilities. [8.308.12.16 NMAC - N, 1-1-14; A, 8-1-14]

8.308.12.17 ELIGIBLE

MEMBERS: [~~Enrollment in the SDCB is contingent upon the MCO member meeting the eligibility requirements as described in the NMAC eligibility rules.~~] A member must meet NF LOC, be determined through a CNA or reassessment to need MCO CB services, and be approved by the member's MCO for the SDCB approach. [8.308.12.17 NMAC - N, 1-1-14; A, 8-1-14]

8.308.12.18 COVERED SERVICES IN SELF-DIRECTED COMMUNITY BENEFIT SDCB:

MAD and the member's MCO cover certain procedures, services, and miscellaneous items. For those services that are the same in ABCB and SDCB, detailed descriptions are found in 8.308.12.13 NMAC [~~and the corresponding sections are referenced accordingly.~~] Other services may be available to a member in the SDCB approach and detailed descriptions are included in each subsection of this section.

A. Behavior support consultation is the provision of assessment, treatment, evaluation and follow-up services to assist the member, his or her parents, family, and primary caregivers with coping skills which promote maintaining the member in a home environment. See Subsection C of Section 13 of this rule for detail description of this service.

B. Customized community supports include participation in community congregate day programs and centers that offer functional meaningful activities that assist with acquisition, retention or improvement in self-help, socialization and adaptive skills. Customized community supports may include day support models. Customized community supports are provided in community day program facilities and centers and can take place in non-institutional and non-residential settings. These services are provided at

least [4] four or more hours per day one or more days per week as specified in the member's care plan.

C. Emergency response services provide an electronic device that enables a member to secure help in an emergency at his or her home, avoiding institutionalization. The member may also wear a portable "help" button to allow for mobility. The system is connected to the member's phone and programmed to signal a response center when the "help" button is activated. The response center is staffed by trained professionals. See Subsection E of Section 13 of this rule for detail description of this service.

D. Employment supports include job development, job seeking and job coaching supports after available vocational rehabilitation supports have been exhausted. See Subsection F of Section 13 of this rule for detail description of this service.

E. Environmental modification services include: the purchase of, the installation of equipment for the physical adaptations to a member's residence that are necessary to ensure the health, welfare, and safety of the member or enhance the member's level of independence. See Subsection G of Section 13 of this rule for detailed description of this service.

F. Home health aide services provide total care or assist the member in all ADL. See Subsection H of Section 13 of this rule for a detailed description of this service.

G. Homemaker services are provided on an episodic or continuing basis to assist the member with ADL, performance of general household tasks, provide companionship to acquire, maintain, or improve social interaction skills in the community, and enable the member to accomplish tasks he or she would normally do for him or herself if he or she did not have a disability.

(1) Homemaker services are provided in the member's home and in the community, depending on the member's needs. The member identifies the homemaker worker's training needs, and, if the member is unable to do the training him or herself, the member arranges for the needed training.

(2) Services are not intended to replace supports available from a primary caregiver. Homemaker services are not duplicative of home health aide services.

(3) Home health aides may provide basic non-invasive nursing assistant skills within the scope of their practice. Homemakers do not have this ability to perform such tasks.

(4) When two or more members are residing in the same residence,

services and supports will be assessed both independently and jointly to determine the level and amount of service and support that is shared. Services and supports will be approved based on common needs and not on the member's needs. If determined by the members' MCO that he or she needs individualized service or support the MCO will include the services or supports in the members care plan.

H. Non-medical transportation services are offered to enable a member to gain access to services, activities, and resources, as specified by his or her care plan. Non-medical transportation services in the SDCB are offered in accordance with the member's care plan. Payment for SDCB non-medical transportation services is made to the member's individual transportation employee or to a public or private transportation service vendor. Payment cannot be made to the member.

I. Nutritional counseling services include assessment of the member's nutritional needs, development and revision of the member's nutritional plan, counseling and nutritional intervention, and observation and technical assistance related to implementation of the nutritional plan.

J. Private duty nursing services include activities, procedures, and treatment for a physical condition, physical illness, or chronic disability for a member who is 21 years of age and older with intermittent or extended direct nursing care in his or her home. See Subsection J of Section 13 of this rule for a detailed description of this service.

K. Related goods are equipment, supplies or fees and memberships, not otherwise provided through the member's MCO general benefits.

(1) Related goods must address a need identified in the member's [~~care plan~~] CNA including improving and maintaining the member's opportunities for full membership in the community, and meets all the following requirements:

(a) be responsive to the member's qualifying condition or disability;

(b) accommodates the member in managing his or her household;

(c) facilitate the member's ADL;

(d) promotes the member's personal safety and health;

(e) affords the member an accommodation for greater independence;

(f) advances the desired outcomes in the member's care plan; and

(g) decreases the need for other medicaid services.

(2) Related goods will be carefully monitored by the member's MCO to avoid abuses or inappropriate use of this

benefit.

L. Respite services are provided to a member unable to care for him or herself and are furnished on a short-term basis to allow the member's unpaid primary caregiver a limited leave of absence in order to reduce stress, accommodate a caregiver illness, or meet a sudden family crisis or emergency. See Section 13 Subsection K of this rule for a detailed description of this service.

M. Skilled maintenance therapy services for a member 21 years and older are provided when his or her MCO's general skilled therapy services are exhausted or not a covered [MCO's] MCO benefit. The community benefit skilled maintenance therapy services include physical therapy, occupational therapy or speech language therapy. Therapy services focus on improving functional independence, health maintenance, community integration, socialization, and exercise, and enhance the support and normalization of the member's family relationships. See Subsection L of Section 13 of this rule for a detailed description of this service.

N. Specialized therapies are non-experimental therapies or techniques that have been proven effective for certain conditions. A member may include specialized therapies in his or her care plan when the services enhance opportunities to achieve inclusion in community activities and avoid institutionalization. Services must be related to the member's disability or condition, ensure the member's health and welfare in the community, supplement rather than replace the member's natural supports and other community services for which the member may be eligible, and prevent the member's admission to institutional services.

(1) Acupuncture is a distinct system of primary health care with the goal of prevention, cure, or correction of any disease, illness, injury, pain or other physical or [mental] behavioral health condition by controlling and regulating the flow and balance of energy, form, and function to restore and maintain physical health and increased mental clarity to a member. Acupuncture may provide effective pain control, decreased symptoms of stress, improved circulation and a stronger immune system, as well as other benefits to the member.

(2) Biofeedback uses visual, auditory or other monitors to feed back physiological information of which the member is normally unaware. This technique enables a member to learn how to change physiological, psychological and behavioral responses for the purposes of improving emotional, behavioral, and

cognitive health and performance. The use of biofeedback may assist in strengthening or gaining conscious control over the above processes in order for the member to self-regulate. Biofeedback therapy is also useful for muscle re-education of specific muscle groups or for treating the member's pathological muscle abnormalities of spasticity, incapacitating muscle spasm, or weakness.

(3) Chiropractic care for a member is designed to locate and remove interference with the transmissions or expression of nerve forces in the human body by the correction of misalignments or subluxations of the vertebral column and pelvis for the purpose of restoring and maintaining health for treatment of human disease primarily by, but not limited to, the adjustment and manipulation of the human structure. Chiropractic therapy may positively affect neurological function, improve certain reflexes and sensations, increase range of motion, and lead to improved general health of the member.

(4) Cognitive rehabilitation therapy services for a member are designed to improve cognitive functioning by reinforcing, strengthening, or reestablishing previously learned patterns of behavior, or establishing new patterns of cognitive activity or compensatory mechanisms for impaired neurological systems. Treatments may be focused on improving a particular cognitive domain such as attention, memory, language, or executive functions. Alternatively, treatments may be skill-based, aimed at improving performance of ADL. The overall goal is to restore the member's function in a cognitive domain or set of domains, or to teach compensatory strategies to overcome specific cognitive problems.

(5) Hippotherapy is a physical, occupational, and speech-language therapy treatment strategy that utilizes equine movement as part of an integrated intervention program to achieve functional outcomes. Hippotherapy applies multidimensional movement of a horse for a member with movement dysfunction and may increase mobility and range of motion, decrease contractures and aid in normalizing muscle tone. Hippotherapy requires that the member use cognitive functioning, especially for sequencing and memory. A member with attention deficits and [behavior problems] maladaptive behaviors is redirecting attention and behaviors by focusing on the activity. Hippotherapy involves therapeutic exercise, neuromuscular education, kinetic activities, therapeutic activities, sensory integration activities, and for individual speech therapy. The activities may also help improve respiratory function and assist with improved breathing and speech production

of the member.

(6) Massage therapy for a member is the assessment and treatment of soft tissues and their dysfunctions for therapeutic purposes primarily for comfort and relief of pain. It includes gliding, kneading, percussion, compression, vibration, friction, nerve strokes, stretching the tissue and exercising the range of motion, and may include the use of oils, salt glows, hot or cold packs or hydrotherapy. Massage increases the circulation, helps loosen contracted, shortened muscles and can stimulate weak muscles to improve posture and movement, improves range of motion and reduces spasticity. Massage therapy may increase, or help sustain, a member's ability to be more independent in the performance of ADL; thereby, decreasing dependency upon others to perform or assist with basic daily activities.

(7) Naprapathy focuses[for a member,] on the evaluation and treatment of neuro-musculoskeletal conditions, and is a system for restoring functionality and reducing pain in muscles and joints. The therapy uses manipulation and mobilization of the spine and other joints, and muscle treatments such as stretching and massage. Based on the concept that constricted connective tissue (ligaments, muscles and tendons) interfere with nerve, blood and lymph flow, naprapathy uses manipulation of connective tissue to open these channels of body function for a member.

(8) A native American healer is an individual who is recognized as a healer within his or her respective native American community. A native American member may be from one of the 22 sovereign tribes, nations and pueblos in New Mexico or may be from other tribal backgrounds. A native American healer delivers a wide variety of culturally-appropriate therapies that support the member by addressing the member's physical, emotional and spiritual health. Treatments delivered by a native American healer may include prayer, dance, ceremony and song, plant medicines and foods; participation in sweat lodges, and the use of meaningful symbols of healing, such as the medicine wheel or other sacred objects. A native American healer provides opportunities for the member to remain connected with his or her tribal community. The communal and spiritual support provided by this type of healing can reduce pain and stress and improve quality of life. It is also important to note that some tribes, nations and pueblos prefer to keep these healing therapies and practices safeguarded due to the significance of their religious ties. [8.308.12.18 NMAC - N, 1-1-14; A, 8-1-14]

8.308.12.19 SDCB NON-COVERED SERVICES: MAD and the member's MCO do not cover certain

procedures, services, or miscellaneous items. The member uses his or her MCO general benefits for non-SBCB services, and these services are not included in the SBCB care plan. Services and goods that are not covered by the SDCB ~~[program]~~ approach include, but are not limited to the following:

A. services covered by third-parties; ~~[the SDCB program]~~ MAD or the MCO is the payer of last resort;

B. any service or good, the provision of which would violate federal or state statutes, rules or guidance; this includes services that are considered primarily recreational or diversional, which are not deemed eligible SDCB services by CMS;

C. formal academic degrees or certification-seeking education, educational services covered by IDEA or vocational training provided by the public education department (PED), division of vocational rehabilitation (DVR);

D. room and board, meaning shelter expenses, including property-related costs, such as rental or purchase of real estate and furnishing(s), home and property maintenance, utilities and utility deposits, and related administrative expenses; utilities include gas, electricity, propane, fire wood, wood pellets, water, sewer, and waste management;

E. experimental or investigational services, procedures or goods, as defined in 8.325.6 NMAC;

F. any goods or services that a household that does not include a person with a disability would be expected to pay for as a routine household expense;

G. any goods or services that are to be used for recreational or diversional purposes;

H. personal goods or items not related to the SDCB member's condition or disability;

I. purchase of animals and the costs of maintaining animals, including the purchase of food, veterinary visits, grooming and boarding but with the exception of training and certification for service dogs;

J. gas cards and gift cards; items that are purchased with SDCB program funds may not be returned for store credit, cash or gift cards;

K. purchase of insurance, such as car, health, life, burial, renters, home-owners, service warranties or other such policies. This includes purchase of cell phone insurance;

L. purchase of a vehicle, and long-term lease or rental of a vehicle;

M. purchase of recreational vehicles, such as motorcycles, campers, boats or other similar items;

N. firearms, ammunition or

any other type of weapons;

O. gambling, games of chance (such as bingo or lottery), alcohol, tobacco, or similar items;

P. vacation expenses, including airline tickets, cruise ship or other means of transport, guided tours, meals, hotel, lodging or similar recreational expenses; this also includes mileage or driver time reimbursement for vacation travel by automobile;

Q. purchase of usual and customary furniture and home furnishings, unless adapted to the SDCB member's disability or use, or of specialized benefit to the SDCB member's condition; requests for adapted or specialized furniture or furnishings must include a doctor's order from the member's health care provider and, when appropriate, a denial of payment from any other source;

R. regularly scheduled upkeep, maintenance and repairs of a home and addition of fences, storage sheds or other outbuildings, except upkeep and maintenance of modifications or alterations to a home which are an accommodation directly related to the SDCB member's qualifying condition or disability;

S. regularly scheduled upkeep, maintenance and repairs of a vehicle, or tire purchase or replacement, except upkeep and maintenance of modifications or alterations to a vehicle or van, which is an accommodation directly related to the SDCB member's qualifying condition or disability; requests must include documentation that the adapted vehicle is the SDCB member's primary means of transportation;

T. clothing and accessories, except specialized clothing based on the SDCB member's disability or condition;

U. training expenses for paid employees;

V. conference or class fees may be covered for SDCB members or unpaid caregivers, but costs associated with such conferences or classes cannot be covered, including airfare, lodging or meals;

W. for ~~[consumer]~~ member electronics such as cell phones computers, printers and fax machines, or other electronic equipment, no more than one of each type of item may be purchased at one time, and ~~[consumer]~~ member electronics may not be replaced more frequently than once every three years; laptops or any electronic tablets are considered computers;

X. cell phone services that include fees for data (to include GPS) or more than one cell phone per SDCB member. SDCB may cover the cost of text messaging if it is documented and determined that the need for texting is related to the SDCB member's disability;

and

Y. moving expenses ~~[to include, but]~~ are limited to, the cost of moving truck rental, gas/mileage, labor, moving equipment, supplies, boxes, tape and moving blankets.
[8.308.12.19 NMAC - N, 1-1-14; A, 8-1-14]

8.308.12.20 TRANSITION TO THE SELF-DIRECTED COMMUNITY BENEFIT:

A member who meets a NF LOC and who qualifies for MCO CB must first access services through his or her MCO's ABCB approach. After 120 calendar days, the member may continue his or her CB services provided through the MCO's ABCB or may ~~[now]~~ select the MCO's SDCB approach. The member's MCO shall obtain a signed statement from the member regarding his or her decision to participate in the SDCB approach. The signed statement will include member attestation that he or she understands the responsibilities of self directing his or her CB services, including the management of his or her care plan. For a member transitioning from a NF: and the member continues to meet NF LOC; the member selects his or her MCO's SDCB approach; the member must access CB services through the MCO's ABCB approach for the first 120 calendar days of eligibility; and after 120 calendar days, the member may transition to the MCO's SDCB.

A. Self-assessment: The member's care coordinator shall provide him or her with the MAD self-assessment instrument. The self-assessment instrument shall be completed by the member with assistance from the member's care coordinator upon request. The care coordinator shall file the completed self-assessment in the member's file.

B. Employer of record (EOR): A member who is an unemancipated minor or has ~~[a plenary or limited guardianship or conservatorship]~~ an authorized representative over financial matters in place cannot serve as his or her own EOR. When the member's care coordinator, based on the results of the member's self-assessment, determines the member requires assistance to direct his or her SDCB services, the member must designate in writing an EOR to assume the functions on behalf of the member. A member that serves as his or her EOR has the option to do so or may, on his or her own, designate a person to serve as his or her EOR in writing. A designated EOR may not also be an employee of the member. The member's file must have documentation of either the member acting as his or her EOR or of the designated EOR. The member's MCO will make the final determination on whether the member may be his or her own EOR.

C. Supports for self-direction: A member or his or her authorized [agent] representative may designate a person to provide support to the member's self-directed functions. The member or his or her authorized [agent] representative may act as his or her EOR. A member's authorized [agent] representative may function as the member's [authorized representative] spokesperson. The member's care coordinator shall include a copy of any EOR or [authorized representative] spokesperson forms in the member's file and provide copies to the member, the member's authorized [agent] representative, [authorized representative] spokesperson and the FMA.

(1) Care coordination for self-direction: The MCO shall ensure that the member or the member's authorized [agent] representative fully participate in developing and administering SDCB services and that sufficient supports, such as care coordinators and support brokers, are made available to assist the member or the member's authorized [agent] representative who [request or require] requests or requires assistance. In this capacity, the care coordinator shall fulfill, in addition to contractual requirement, the following tasks:

(a) understand member and EOR roles and responsibilities;

(b) identify resources outside the member's MCO SDCB, including natural and informal supports, that may assist in meeting the member's long term care needs;

(c) understand the array of [the] SDCB services;

(d) assign the annual SDCB budget [for the SDCB] based on the member's CNA to address the needs of the member;

(e) monitor utilization of SDCB services on a regular basis;

(f) conduct employer-related activities such as assisting a member in identifying a designated EOR as appropriate;

(g) identify and resolve issues related to the implementation of the member's SDCB care plan;

(h) assist the member with quality assurance activities to ensure implementation of the member's SDCB care plan and utilization of his or her authorized budget;

(i) recognize and report critical incidents, including abuse, neglect, exploitation, emergency services, law enforcement involvement, and environmental hazards;

(j) monitor quality of services provided by the member's support broker; and

(k) work with the member to provide the necessary assistance

for successful SDCB [program] implementation.

(2) A support broker is a qualified vendor for a SDCB member who is either employed by or contracted by the member's MCO. At a minimum, the support broker shall perform the following functions:

(a) educate the member on how to use self-directed supports and services and provide information on program changes or updates;

(b) review, monitor and document progress of the member's SDCB care plan;

(c) assist in managing budget expenditures, complete and submit SDCB care plan and [budget] revisions;

(d) assist with employer functions such as recruiting, hiring and supervising SDCB providers;

(e) assist with developing and approving [and processing] job descriptions for SDCB direct supports;

(f) assist with completing forms related to the member's employees;

(g) assist with approving timesheets, purchase orders or invoices for goods, obtain quotes for services and goods, as well as identify and negotiate with vendors;

(h) assist with problem solving of an employee or vendor payment issue with the FMA and other appropriate parties;

(i) facilitate resolution of any disputes regarding payment to a provider for services rendered;

(j) develop the care plan for SDCB based on the member's budget amount as determined by the CNA; and

(k) assist in completing all documentation required by the FMA.

(3) FMA acts as the intermediary between the member and the member's MCO payment system and assists the member or the member's EOR with employer-related responsibilities. The FMA pays employees and vendors based upon [an] the member's approved SDCB care plan and budget. The FMA assures member and program compliance with state and federal employment requirements, monitors, and makes available to the member and MAD reports related to utilization of services and budget expenditures. Based on the member's approved individual care plan and budget, the FMA must:

(a) verify that the member is eligible for SDCB services prior to making payment for services;

(b) receive and verify that all required employee and vendor documentation and qualifications are in compliance with [the] MAD NMAC [SBCB] rules and the MAD MCO policy manual;

(c) establish an accounting for each member's budget;

(d) process and pay invoices for

goods, services, and supports approved in the member's SDCB care plan and supported by required documentation; and

(e) process all payroll functions on behalf of the member and EOR including:

(i) collects and processes timesheets of employees in accordance with the MAD approved payment schedule;

(ii) processes payroll, withholding, filing, and payment of applicable federal, state and local employment-related taxes and insurance;

(iii) tracks and reports disbursements and balances of the member's budget and provides a monthly report of expenditures and budget status to the member and his or her support broker, and quarterly and annual documentation of expenditures to MAD;

(iv) receives and verifies a provider's agreement, including collecting required provider qualifications;

(v) monitors hours billed for services provided and the total amounts billed for all goods and services during the month;

(vi) answers inquiries from the SDCB member and solves problems related to the FMA's responsibilities; and

(vii) reports any concerns related to the health and safety of the member or when the member is not following his or her approved SDCB care plan to the MCO and MAD as appropriate.

D. Budget: The member's MCO will determine the maximum annual budget allotment based on the member's CNA. The member may request a revision to the SDCB care plan and budget when a change in circumstances warrants such revisions, such as a change in health condition or loss of natural supports. All changes are subject to assessment and approval by the MCO.

E. SDCB care plan: The support broker and the member shall work together to develop an annual SDCB care plan for the SDCB services the member is identified to need as a result of his or her CNA. The SDCB care plan will not exceed the MCO determined budget. The support broker and member shall refer to the rates specified by HSD in selecting payment rates for qualified providers and vendors. The care plan for SDCB services shall be based upon the member's assessed needs and approved by the member's MCO. The support broker shall closely monitor the utilization of SDCB care plan services to ensure that the member does not exceed the approved annual budget.

(1) SDCB care plan review criteria: Services and goods identified in the member's requested SDCB care plan

may be considered for approval by the MCO if all of the following requirements are met:

- (a) the services or goods must be responsive to the member's qualifying condition or disability;
 - (b) the services or goods must address the member's clinical, functional, medical or rehabilitative needs;
 - (c) the services or goods must facilitate the member's ADL per [the] his or her CNA;
 - (d) the services or goods must promote the member's personal health and safety;
 - (e) the services or goods must afford the member an accommodation for greater independence;
 - (f) the services or goods must support the member to remain in the community and reduce his or her risk for institutionalization;
 - (g) the need for the services or goods must be approved and documented in the CNA and advance the desired outcomes in the member's SDCB care plan;
 - (h) the services or goods are not available through another source;
 - (i) the service or good is not prohibited by federal regulations, [state] MAD NMAC rules and instructions;
 - (j) the proposed rate for each service is within the MAD approved rate range for that chosen service;
 - (k) the proposed cost for each good is reasonable, appropriate and reflects the lowest available cost for that chosen good; and
- (l) the estimated cost of the service or good is specifically documented in the member's SDCB care plan [budget].
- (2) SDCB care plan revisions: The SDCB care plan may be [modified] revised based upon a change in the member's needs or circumstances, such as a change in the member's health status or condition or a change in the [eligible] member's support system, such as the death or disabling condition of [a family or other] an individual who was providing services. The member or the EOR is responsible for assuring that all expenditures are in compliance with the most current determination of need. SDCB care plan revisions involve requests to add new goods or services to a care plan or to reallocate funds from any line item to another approved line item. SDCB care plan revisions must be submitted to the member's MCO for review and determination. Other than for critical health and safety reasons, SDCB care plan revisions may not be submitted to the MCO for review within the last 60 calendar days of the care plan year. Prior to submitting a SDCB care plan revision request, the member is responsible for communicating

any utilization of services that are not in compliance with the care plan to the support broker. At the MCO's discretion, a revision to the SDCB care plan may require another CNA. If the SDCB care plan revision includes a request for additional services, another CNA must be performed by the MCO to determine whether the change in circumstance or need warrants additional funding for additional services prior to SDCB care plan revision approval.

F. SDCB back-up plan: The support broker shall assist the member and his or her EOR in developing a back-up plan for the member's SDCB services that adequately [indentifies] identifies how the member and EOR will address situations when a scheduled provider is not available or fails to show up as scheduled. The member's support broker shall assess the adequacy of the member's back-up plan at least on an annual basis and when changes in the type, amount, duration, scope of the SDCB or the schedule of needed services, or a change of providers (when such providers also serve as back-up to other [providers] members) or change in availability of paid or unpaid back-up providers to deliver needed care.

G. Member and EOR training: The member's [MCOs] MCO shall require the member electing to enroll in the SDCB approach and his or her [EORs] EOR to receive relevant training. The support broker shall be responsible for arranging for initial and ongoing training of the member and his or her [EORs] EOR.

(1) At a minimum, self-direction training for member and his or her EOR shall address the following issues:

- (a) understanding the role of the member and EOR with SDCB;
 - (b) understanding the role of the care coordinator, support broker, the MCO, and the FMA;
 - (c) selecting providers and vendors;
 - (d) critical incident reporting;
 - (e) member abuse and neglect prevention and reporting;
 - (f) being an employer, evaluating provider performance and managing providers;
 - (g) fraud and abuse prevention and reporting;
 - (h) performing administrative tasks, such as, reviewing and approving electronically captured visit information and timesheets and invoices; and
 - (i) scheduling providers and back-up planning.
- (2) The member's MCO shall arrange for ongoing training for the member and his or her EOR upon request or if a support broker, through monitoring, determines that additional training is warranted.

H. Claims submission and payment: The member or EOR shall review and approve timesheets of [his or her] the member's providers and invoices from [his or her] the member's vendors to determine accuracy and appropriateness. No SDCB provider shall exceed 40 hours paid work in one work week per EOR. Timesheets must be submitted and processed on a two-week pay schedule according to the FMA's prescribed payroll payment schedule. The FMA shall be responsible for processing the member's [payments] timesheets and invoices for approved SDCB services and goods.

[8.308.12.20 NMAC - N, 1-1-14; A, 8-1-14]

8.308.12.21 TERMINATION FROM ACB PCS/CDIRECTED OR SDCB

The MCO may involuntarily terminate a member from the [self-directed community benefit] PCS/CDirected or the SDCB approach under any of the following circumstances.

A. The member, the member's authorized representative or his or her EOR refuses to follow NMAC rules and his or her MCO policies after receiving focused technical assistance on multiple occasions and support from his or her care coordinator, PCS agency or FMA, which is supported by documentation of the efforts to assist the member. For purposes of this rule, focused technical assistance is defined as a minimum of three separate occasions where the member, authorized representative or his or her EOR have received training, education or technical assistance, or a combination of both, from the MCO, the FMA, the PCS agency or MAD.

B. There is an immediate risk to the member's health or safety by continued consumer direction or self-direction of services, i.e., the member is in imminent risk of death or serious bodily injury. Examples include but are not limited to the following:

(1) the member refuses to include and maintain services in his or her PCS/CDirected or SDCB care plan that would address health and safety issues identified in [his or her comprehensive needs assessment] the member's CNA or challenges the assessment after repeated and focused technical assistance and support from program staff, the care coordinator, PCS agency or the FMA;

(2) the member is experiencing significant health or safety needs and, refuses to incorporate the care coordinator's recommendations into his or her IPoC or care plan, or exhibits behaviors that endanger him or her or others;

(3) the member misuses his or her SDCB budget following repeated and focused technical assistance and support

from the care coordinator and the FMA, which is supported by documentation;

(4) the member expends his or her entire SDCB budget prior to the end of the care plan year; or

(5) the member or authorized [agent] representative intentionally misuses [his or her] the member's PCS/CDirected or SDCB services or goods.

C. The [MCOs] MCO shall submit to MAD any requests to terminate a member from the PCS/CDirected or the SDCB approach with sufficient documentation regarding the rationale for termination. Upon MAD approval, the MCO shall notify the member regarding termination in accordance with NMAC rules and MCO policies. The member shall have the right to appeal the determination by requesting [an internal] a MCO appeal and, if the termination is still upheld by the MCO, an HSD administrative hearing. The MCO shall facilitate a seamless transition from the PCS/CDirected to PCS/CDelegated or SDCB to ABCB approach to ensure there are no interruptions or gaps in services. Involuntary termination of a member from SDCB shall not affect a member's eligibility for ABCB covered services or continued MCO membership. However, a member that has been involuntarily terminated from SBCB must access PCS from the PCS/CDelegated model for at least one year. Involuntary termination of a member from PCS/CDirected shall not affect a member's eligibility for other CB services or PCS/CDelegated services.

D. A member who has voluntarily switched to PCS/CDelegated or ABCB or who has been involuntarily terminated from PCS/CDirected or from SDCB may request to be reinstated in the PCS/CDirected or the SDCB approach to his or her MCO. Such requests may not be made more than once in a calendar year. The member's PCS/CDirected or SDCB reinstatement [for members] when he or she was involuntarily terminated is at the discretion of his or her MCO. The care coordinator shall work with the member's PCS agency or FMA to ensure that the issues previously identified as reasons for termination have been adequately addressed prior to such reinstatement. [All members] A member shall be required to participate in SDCB training programs prior to his or her SDCB reinstatement. A member shall be required to participate in PCS/CDirected training programs and the MCO may request the member's PCP provide a signed statement that the PCS/CDirected approach is appropriate for the member prior to his or her PCS/CDirected reinstatement. [8.308.12.21 NMAC - N, 1-1-14; A, 8-1-14]

NEW MEXICO OFFICE OF SUPERINTENDENT OF INSURANCE

This is an amendment to 13.14.1 NMAC, Sections 1 and 25, effective 7-31-14.

13.14.1.1 ISSUING AGENCY:
[Public Regulation Commission, Insurance Division, Title Insurance Bureau.] 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]

13.14.1.25 DEFINITIONS "S":
As used in [13 NMAC Chapter 14;] 13.14 NMAC, and also in interpreting the New Mexico Title Insurance Act, the following terms shall have the following meanings:

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 state insurance board, state corporation commission, department of insurance or the state of New Mexico, or anyone acting in an official capacity on his behalf.] 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]

NEW MEXICO OFFICE OF SUPERINTENDENT OF INSURANCE

This is an amendment to 13.14.3 NMAC, Sections 1 and 11, effective 7-31-14.

13.14.3.1 ISSUING AGENCY:
[Public Regulation Commission, Insurance Division, Title Insurance Bureau.] Office of Superintendent of Insurance, Title Insurance Bureau.
[4-1-96; 13.14.3.1 NMAC - Rn, 13 NMAC 14.4.1 & A, 5-15-00; A, 7-31-14]

13.14.3.11 PREMIUM DIVISION WITH AGENTS -- OTHER FEES AND EXPENSES:

A. [On or after May 1, 2000, all agency contracts, agency agreements and other contracts between licensed New Mexico title insurance agents and insurers admitted to write title insurance in New Mexico shall provide that agents shall retain the following amounts of all gross premiums on commitments, binders, policies and endorsements issued on or after April 1, 1995, and shall remit to the insurer the remainder of all such gross premiums.] All agency contracts, agency agreements and other contracts between licensed New Mexico title insurance agents and insurers admitted to write title insurance in New Mexico shall provide that agents shall retain the following amounts of all gross premiums on policies, and shall remit to the insurer the remainder of all gross premiums:

(1) for amounts of insurance up to two million dollars (\$2,000,000), agents shall retain eighty percent (80%);

(2) for additional amounts of insurance over two million dollars (\$2,000,000) and up to five million dollars (\$5,000,000), agents shall retain seventy-five percent (75%);

(3) for additional amounts of insurance over five million dollars (\$5,000,000) and up to ten million dollars (\$10,000,000), agents shall retain seventy percent (70%);

(4) for additional amounts of insurance over ten million dollars (\$10,000,000) and up to twenty-five million dollars (\$25,000,000), agents shall retain sixty-five percent (65%);

(5) for additional amounts of insurance over twenty-five million dollars (\$25,000,000) and up to fifty million dollars (\$50,000,000), agents shall retain sixty

percent (60%); and

(6) for additional amounts of insurance over fifty million dollars (\$50,000,000), agents shall retain fifty percent (50%).

B. [In addition, agents shall retain no part of the additional twenty-five cents (\$0.25) per one thousand dollars (\$1,000) collected on policy amounts in excess of ten million dollars (\$10,000,000) as provided for in 13.14.9.18 NMAC.] Agents shall retain eighty percent (80%) of all gross premiums paid for the following coverages and shall remit to the insurer the remainder of the gross premiums:

(1) all title commitments and binders as provided for in Subsection A of 13.14.9.19 NMAC;

(2) deletion of standard exception 4 from the title commitment or binder for mechanics' lien coverage where there is no loss of insured priority over mechanics' liens as provided for in 13.14.6.15 NMAC and 13.14.10.9 NMAC for owner's policies or 13.14.7.14 NMAC and 13.14.9.40 NMAC for loan policies; and

(3) any endorsements providing for fixed premiums of one hundred dollars (\$100) or less.

C. [This premium division shall not apply to replacement policies in the case of insolvent insurers issued pursuant to 13.14.6.22 NMAC, 13.14.7.20 NMAC, and 13.14.9.26 NMAC. Agents shall retain forty-two and one-half percent (42.5%) of the gross premium collected for such replacement policies and shall remit to the insurer the remainder of said gross premium. These premium divisions shall remain in effect until altered by the superintendent who shall review the same annually at the title insurance hearing held in November of each year or as otherwise specifically provided by these regulations. Fees, which are not premium, such as inspection fees, cancellation fees, escrow fees, and other charges (whether mentioned in these regulations or not) are not subject to division between agent and insurer. No agent or insurer shall pay or receive any consideration for title insurance business (or referral of business) other than that division of premiums set forth herein. No agent shall be required to contribute or pay any amount to an insurer for reinsurance or otherwise, and any contractual provision to the contrary shall, as of April 1, 1995, be void and unenforceable. Insurers shall not reward or otherwise compensate agents (or vice versa) directly or indirectly for business other than as herein provided.] Agents shall retain the amounts attributable to the pro-rata premium for each level of the amounts of insurance as set forth in Subsection A above for the following coverages and shall remit to the insurer the remainder of the gross premiums:

(1) premium for deletion of standard exception 3 from the title commitment or binder for survey coverage in owner's or leasehold owner's policies as provided for in 13.14.6.14 NMAC and 13.14.10.10 NMAC;

(2) extra-hazardous premium for deletion of standard exception 4 from the title commitment or binder for mechanics' lien coverage where there is a loss of insured priority over mechanics' liens as provided for in 13.14.6.15 NMAC and 13.14.10.9 NMAC for owner's policies or 13.14.7.14 NMAC and 13.14.9.40 NMAC for loan policies; and,

(3) any endorsements providing for fixed premiums of more than one hundred dollars (\$100) or variable premiums based upon a percentage of the basic premium rate.

D. [Title insurers may pay on behalf of, or reimburse their agents for expenses associated with any instruction, lectures or seminars conducted by that title insurer for its agents, if such instruction, lectures or seminars have been approved in advance by the department of insurance for continuing education credit under NMSA-1978 Section 59A-12-26. An insurer conducting such instruction, lectures or seminars shall submit to the superintendent for approval, in advance, an agenda and detailed budget for such instruction, lectures or seminars. Such courses of instruction, lectures or seminars shall be offered by the title insurer to all of its agents on a non-discriminatory basis.] In addition, agents shall retain no part of the additional twenty-five cents (\$0.25) per one thousand dollars (\$1,000) collected on policy amounts in excess of ten million dollars (\$10,000,000) as provided for in 13.14.9.18 NMAC.

E. This premium division shall not apply to replacement policies in the case of insolvent insurers issued pursuant to 13.14.6.22 NMAC, 13.14.7.20 NMAC and 13.14.9.26 NMAC. Agents shall retain forty-two and one-half percent (42.5%) of the gross premium collected for such replacement policies and shall remit to the insurer the remainder of said gross premium.

F. These premium divisions shall remain in effect until altered by the superintendent who shall review the same biennially at the title insurance hearing held in November of every odd numbered year or as otherwise specifically provided by these regulations.

G. Fees, which are not premium, such as inspection fees, cancellations fees, escrow fees and other charges (whether mentioned in these regulations or not) are not subject to division between agent and insurer.

H. No agent or insurer shall pay or receive any consideration

for title insurance business (or referral of business) other than that division of premiums set forth herein. Insurers shall not reward or otherwise compensate agents (or vice versa) directly or indirectly for business other than as herein provided.

I. No agent shall be required to contribute or pay any amount to an insurer for reinsurance or otherwise, and any contractual provision to the contrary shall be void and unenforceable.

J. Title insurers may pay on behalf of, or reimburse their agents for expenses associated with any instruction, lectures or seminars conducted by that title insurer for its agents, if such instruction, lectures or seminars have been approved in advance by the office of the superintendent of insurance for continuing education credit under Section 59A-12-26 NMSA 1978. An insurer conducting such instruction, lectures or seminars shall submit to the superintendent for approval, in advance, an agenda and detailed budget for such instruction, lectures or seminars. Such courses of instruction, lectures or seminars shall be offered by the title insurer to all of its agents on a non-discriminatory basis. [6-16-86...4-3-95; 13.14.3.11 NMAC - Rn, 13 NMAC 14.4.11 & A, 5-15-00; A, 7-1-05; A, 9-1-07; A, 7-1-08; A, 7-31-14]

NEW MEXICO OFFICE OF SUPERINTENDENT OF INSURANCE

This is an amendment to 13.14.5 NMAC, Sections 1 and 9, effective 7-31-14.

13.14.5.1 ISSUING AGENCY:
[Public Regulation Commission, Insurance Division, Title Insurance Bureau.] 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]

13.14.5.9 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) [RESERVED]

(7) [~~Water rights, claims or title to water.~~] Water rights, claims or title to water.

(8) [RESERVED]

(9) Taxes for the year _____, and thereafter. (See 13.14.5.12 NMAC)

(10) 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[s] 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 (NM7 or NM34), 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]

NEW MEXICO OFFICE OF SUPERINTENDENT OF INSURANCE

This is an amendment to 13.14.6 NMAC, Sections 1 and 19, effective 7-31-14.

13.14.6.1 ISSUING AGENCY:

[Public Regulation Commission, Insurance Division, Title Insurance Bureau.] Office of Superintendent of Insurance, Title Insurance Bureau.

[4-1-96; 13.14.6.1 NMAC - Rn & A, 13 NMAC 14.6.1, 5-15-00; A, 7-31-14]

13.14.6.19 U.S. POLICIES:

A. [NM Form 7, U.S. Owner's policy, is generally issued prior to acquisition by the United States (or its agency) and, therefore, serves as an interim binder. Upon acquisition of title, the United States (or its agency) may be issued a down date endorsement which amends the effective date of the policy and shows the exact nature acquired by and of the title in the United States subject to payment of all premiums due for the policy and pursuant to 13.14.10.16 NMAC. The general exceptions of NM form 7 are not the same as a standard Owner's Policy.] NM form 34 shall contain standard exceptions as provided in 13.14.6.11 NMAC and subject to their deletion as provided in 13.14.6.12 NMAC through 13.14.6.16 NMAC.

B. NM form 34 does not act as an interim binder but requires the use of a standard commitment. [The forms of both NM form 7 and NM form 34 and the down date endorsement, NM form 27, are] NM form 34 is prescribed by the department of justice. Each insurer shall establish written instructions and specific underwriting standards concerning the issuance of NM form 34 policies. [6-16-86, 4-1-93; 13.14.6.19 NMAC - Rn, 13 NMAC 14.6.19, 5-15-00; A, 7-31-14]

NEW MEXICO OFFICE OF SUPERINTENDENT OF INSURANCE

This is an amendment to 13.14.7 NMAC, Sections 1, 14, 17, 18 and 19, effective 7-31-14.

13.14.7.1 ISSUING AGENCY:
[Public Regulation Commission, Insurance Division, Title Insurance Bureau.] 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]

13.14.7.14 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 [~~two circumstances:~~] 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 a loan policy upon payment of the additional premium required in Subsection [G] E of 13.14.9.40 NMAC. If the mortgage or deed of trust being insured secures a loan being made for construction purposes, [~~an NM _____ construction loan endorsement of an NM _____ construction loan direct payment endorsement shall be issued with the loan policy.~~] an NM 83 _____ construction loan endorsement, an NM 83.1 _____ construction loan direct payment endorsement, or an NM 83.2 construction loan insured's direct payment endorsement may be issued with the loan policy and NM 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 a loan policy upon receipt of the additional extra-hazard risk premium specified in Subsection [G] E of 13.14.9.40 NMAC. If the mortgage or deed of trust being insured secures a loan being made for construction purposes, [~~an NM _____ construction loan endorsement or an NM _____ construction loan direct payment endorsement shall be issued with the loan policy.~~] an NM 83 _____ construction loan endorsement, an NM 83.1 _____ construction loan direct payment endorsement, or an NM 83.2 construction loan insured's direct payment endorsement may be issued with the loan policy and NM 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]

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 _____.]

[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]

13.14.7.18 CONSTRUCTION LOAN POLICIES:

A. Construction loan policies may not be issued after [_____] the effective date of this rule [_____] .

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 or loan policy containing a two-year (2) claims made limitation may be extended by issuance of no more than four (4) extension endorsement of six (6) months each. In no event may the coverage provided by a construction loan policy, 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.

[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]

13.14.7.19 [PENDING DISBURSEMENT CLAUSE:]

[A. _____ Prior to, but not on or after _____ a construction lender may have been issued a loan

policy containing the following pending disbursements clause: "~~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.~~" Loan policies containing this said pending disbursement clause may not be issued on or after _____.

B. At the time of each disbursement, an NM-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 (15) days of issuing the endorsement. [RESERVED] [6-16-86, 3-1-88; 13.14.7.19 NMAC - Rn, 13 NMAC 14.7.19, 5-15-00; A, 10-1-12; A, 7-31-14]

NEW MEXICO OFFICE OF SUPERINTENDENT OF INSURANCE

This is an amendment to 13.14.8 NMAC, Sections 1, 16 and 23, effective 7-31-14.

13.14.8.1 ISSUING AGENCY: [Public Regulation Commission, Insurance Division, Title Insurance Bureau.] Office of Superintendent of Insurance, Title Insurance Bureau.

[4-1-96; 13.14.8.1 NMAC - Rn & A, 13 NMAC 14.8.1, 5-15-00; A, 7-31-14]

13.14.8.16 RESTRICTIONS, ENCROACHMENTS, AND MINERALS ENDORSEMENTS:

A. Upon being furnished with a satisfactory survey, and where the underwriter determines the risk to be acceptable:

(1) NM form 50, restrictions, encroachments and minerals endorsement, and the NM form 50.1, restrictions, encroachments and minerals endorsement - lender improved land may be attached only to a loan policy but shall not be issued where the intended use of the property is 1-4 family residential;

(2) NM form 56, restrictions, encroachments and minerals endorsement - unimproved land, and the NM form 56.1 restrictions, encroachments and minerals endorsement - unimproved land may be attached only to an owner's policy covering unimproved land; and

(3) NM form 57, restrictions, encroachments and minerals endorsement - improved land, and the NM form 57.1, restrictions, encroachments and minerals endorsement - improved land may be attached only to an owner's policy covering improved land.

B. Each endorsement is to be issued only in conjunction with the issuance of survey coverage, as authorized by 13.14.6.14 NMAC or 13.14.7.13 NMAC. [or following:

(1) the issuance of survey coverage, as authorized by 13.14.6.14 or 13.14.7.13 NMAC;

(2) the modification of standard exception 7; and

(3) the mention in a special exception of any applicable patent and acts authorizing the issuance thereof, as authorized by Paragraph (7) of Subsection A of 13.14.5.9 NMAC.]

C. The coverage relating to minerals provided under paragraph 3(b) of NM form 50, paragraph 4 of NM form 50.1, paragraph 2 of NM form 56 and NM form 56.1, paragraph 2(b) of NM form 57, or paragraph 3 of NM form 57.1, as appropriate shall not be issued where minerals have been severed, unless there has been a waiver of the right of entry or surface usage of the mineral reservation.

D. The coverage provided by any part of each endorsement may be deleted but may not be increased by:

(1) crossing out the part on the form of endorsement;

(2) retyping the form leaving out the part; or

(3) special endorsement.

E. Each endorsement may be issued only upon the written authorization of the underwriter. The issuing agent shall retain such written authorization of the underwriter for a period of not less than two years following issuance of the endorsement.

[6-1-98; 13.14.8.16 NMAC - Rn, 13 NMAC 14.8.16, 5-15-00; A, 3-1-02; A, 8-17-09; A, 7-31-14]

13.14.8.23 LOAN POLICY AGGREGATION ENDORSEMENT:

The loan policy aggregation endorsement, NM form 60 or NM form 60.1, may be attached to loan policies, provided the premium in 13.14.10.43 NMAC is paid and provided multiple policies are simultaneously issued covering separate mortgages securing the same indebtedness

or loan. This endorsement may not be attached to policies insuring residential property containing four or fewer dwelling units. Each insurer shall establish written instructions and underwriting standards concerning the use of this endorsement. [13.14.8.23 NMAC - N, 7-1-03; A, 7-31-14]

NEW MEXICO OFFICE OF SUPERINTENDENT OF INSURANCE

This is an amendment to 13.14.10 NMAC, Sections 1, 8, 9, 11, 12, 14, 15, 16, 17, 18, 20, 22, 23, 24, 30, 32, 33, 36, 37, 38, 40, 41, 43, 44, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58 and 59, effective 7-31-14.

13.14.10.1 ISSUING AGENCY: ~~[Public Regulation Commission, Insurance Division, Title Insurance Bureau.] Office of Superintendent of Insurance, Title Insurance Bureau.~~
[4-1-96; 13.14.10.1 NMAC - Rn & A, NMAC 14.10.1, 5-15-00; A, 7-31-14]

13.14.10.8 ASSIGNMENTS OF MORTGAGES: When a mortgage upon which a loan policy has been issued is assigned, each successive assignee may obtain an assignment endorsement, NM form 24, or an assignment and date down endorsement, NM form 24.1 from the insuring company certifying the title to include the date of recording the assignment, for a premium of ~~[twenty-five dollars (\$25.00)] fifty dollars (\$50.00)~~ if issued within six (6) months of the date of the policy or date of the last endorsement reflecting an earlier assignment, or a premium of sixty-five dollars (\$65.00) if issued more than six (6) months from the date of the policy or last endorsement reflecting an earlier assignment, if any, whichever is later.
[6-16-86, 2-16-87, 6-1-98; 13.14.10.8 NMAC - Rn, 13 NMAC 14.10.8, 5-15-00; A, 5-31-00; A, 8-17-09; A, 10-1-12; A, 7-31-14]

13.14.10.9 MECHANICS' LIEN COVERAGE IN OWNER'S POLICY (PERIOD NOT EXPIRED): Owner's policies may be issued with no exception to possible unfiled mechanics' or materialmen's liens upon compliance with 13.14.6.15 NMAC and payment of the following additional premium:

A. When all improvements have been fully completed and the statutory period for filing mechanics' or materialmen's liens has expired, this endorsement shall be issued for a premium of ~~[twenty-five dollars (\$25.00)] fifty dollars (\$50.00)~~ and,

B. When new construction is involved, construction of the improvements has been fully completed and accepted by the insured owner and the period for filing mechanics' or materialmen's liens has not expired, this endorsement shall be issued for an extra hazard premium of three dollars (\$3.00) per thousand calculated on the face amount of the owner's policy.

[6-16-86...4-1-94; 6-1-98; 13.14.10.9 NMAC - Rn, 13 NMAC 14.10.9, 5-15-00; A, 5-31-00; A, 7-31-14]

13.14.10.11 ADDITIONAL ADVANCES UNDER OPEN END MORTGAGES: A loan policy may be endorsed to insure the validity and priority of the lien of the additional advance upon payment of an endorsement premium of ~~[twenty-five dollars (\$25.00)] fifty dollars (\$50.00)~~ plus an additional premium calculated by determining the difference between the charge for a loan policy in the amount of the unpaid principal balance due to the lender before the advance is made and the charge for a loan policy in the amount of the principal balance due after the advance has been made utilizing the appropriate brackets in the schedule of basic premium rates in effect as of the date of the endorsement. The minimum combined charge for this endorsement is fifty dollars (\$50.00).

[6-16-86, 2-16-87, 6-1-98; 13.14.10.11 NMAC - Rn, 13 NMAC 14.10.11, 5-15-00; A, 5-31-00; A, 7-31-14]

13.14.10.12 VARIABLE RATE, NEGATIVE AMORTIZATION AND REVOLVING CREDIT LOAN ENDORSEMENTS: The premium for the issuance of either a variable rate mortgage endorsement, negative amortization endorsement or a revolving credit loan endorsement, when such endorsement is issued at the same time as and attached to its loan policy, the charge shall be ~~[twenty-five dollars (\$25.00)] fifty dollars (\$50.00)~~ for each such endorsement issued. Should any such endorsement be issued at the request of the insured subsequent to the issuance of the loan policy, the premium for each endorsement issued is fifty dollars (\$50.00).

[6-16-86, 2-16-87, 6-1-98; 13.14.10.12 NMAC - Rn, 13 NMAC 14.10.12, 5-15-00; A, 5-31-00; A, 7-31-14]

13.14.10.14 CONDOMINIUM ENDORSEMENT: A condominium endorsement may be issued at the same time as and attached to an owner's or a loan policy for a premium of ~~[twenty-five dollars (\$25.00)] fifty dollars (\$50.00)~~. Paragraph 3 of NM form 30 may be deleted at the option of the insurer. Each insurer

shall establish its written underwriting requirements for such deletion and shall furnish its agent(s) written instructions relating thereto.
[6-16-86, 2-16-87, 6-1-98; 13.14.10.14 NMAC - Rn, 13 NMAC 14.10.14, 5-15-00; A, 5-31-00; A, 8-17-09; A, 7-31-14]

13.14.10.15 PLANNED UNIT DEVELOPMENT (PUD) ENDORSEMENT: A planned unit development endorsement, NM form 13, and the planned unit development (unpaid assessments) NM form 13.1 may be issued at the same time as and attached to a policy for a premium of ~~[twenty-five dollars (\$25.00)] fifty dollars (\$50.00)~~.
[6-16-86, 2-16-87, 6-1-98; 13.14.10.15 NMAC - Rn, 13 NMAC 14.10.15, 5-15-00; A, 5-31-00; A, 8-17-09; A, 7-31-14]

13.14.10.16 [U.S. POLICY; DATE DOWN ENDORSEMENT]: ~~The date down endorsement to a U.S. Policy when the ALTA U.S. policy form - 1963 was issued shall be issued for a premium of twenty-five dollars (\$25.00) whenever the United States has acquired title to the property and requests endorsement of its policy to reflect its acquisition.]~~
[RESERVED]
[6-16-86...4-1-93; 6-1-98; 13.14.10.16 NMAC - Rn, 13 NMAC 14.10.16, 5-15-00; A, 5-31-00; A, 7-31-14]

13.14.10.17 CORRECTION ENDORSEMENT: There is no charge for the issuance of an endorsement correcting a commitment, binder or policy containing an error or omission not caused by the insured. If the correction results in additional liability for which the correct premium has not already been charged, the premium for the endorsement shall be the premium due and payable for the additional liability. Likewise, if the correction results in the application of a different or additional rate regulation(s) than was applied to the policy or its endorsements, the premium due and payable for this endorsement shall be the balance of premium unpaid after application of the appropriate rate regulation(s) following the correction. In addition, if the correction is caused by the insured (i.e., inaccurate loan closing instructions), an additional premium of ~~[twenty-five dollars (\$25.00)] fifty dollars (\$50.00)~~ shall be collected for this endorsement.
[6-16-86, 2-16-87, 6-1-98; 13.14.10.17 NMAC - Rn, 13 NMAC 14.10.17, 5-15-00; A, 5-31-00; A, 7-31-14]

13.14.10.18 DOWN DATE ENDORSEMENT: ~~[The] Any~~ down date (or date down) endorsement to a standard loan policy containing a ~~two-year (2) claims made limitation~~ ~~[pending disbursement~~

clause;] to a construction loan policy, or to a foreclosure title insurance policy including the NM 84 disbursement endorsement, shall be issued for a premium of [~~twenty-five dollars (\$25.00)~~] fifty dollars (\$50.00). [6-16-86...4-3-95; 6-1-98; 13.14.10.18 NMAC - Rn, 13 NMAC 14.10.18, 5-15-00; A, 5-31-00; A, 09-15-10; A, 7-31-14]

13.14.10.20 RENEWAL, EXTENSION AND PARTIAL RELEASE ENDORSEMENT:

Upon request of the named insured and the proper recording of all necessary documents at the expense of the insured, the insuring company or its agent may endorse its loan policy to reflect the renewal, extension, reinstatement, modification, partial release, release of additional collateral or release from personal liability of an insured lien in the manner prescribed by Subsection D of 13.14.8.8 NMAC for a premium of [~~twenty-five dollars (\$25.00)~~] fifty dollars (\$50.00) if issued within six (6) months from the date of the policy or date of the last endorsement reflecting an earlier assignment, renewal, etc., or a premium of sixty-five dollars (\$65.00) if issued more than six (6) months from the date of the policy or last such endorsement, if any, whichever is later. [6-16-86, 2-16-87, 6-1-98; 13.14.10.20 NMAC - Rn, 13 NMAC 14.10.20, 5-15-00; A, 5-31-00; A, 10-1-12; A, 7-31-14]

13.14.10.22 ENVIRONMENTAL PROTECTION LIEN ENDORSEMENT:

Upon request of an insured lender or its assignee, the company may issue an environmental protection lien endorsement (NM form 29) for a premium of [~~twenty-five dollars (\$25.00)~~] fifty dollars (\$50.00). [5-1-88...4-3-95; 6-1-98; 13.14.10.22 NMAC - Rn, 13 NMAC 14.10.22, 5-15-00; A, 5-31-00; A, 7-31-14]

13.14.10.23 PENDING IMPROVEMENTS ENDORSEMENT:

When a pending improvements endorsement (NM form 23) is issued pursuant to 13.14.6.8 NMAC - the premium for the endorsement shall be [~~twenty-five dollars (\$25.00)~~] fifty dollars (\$50.00) in addition to the premium charged for the policy. [3-1-89, 6-1-98; 13.14.10.23 NMAC - Rn, 13 NMAC 14.10.23, 5-15-00; A, 5-31-00; A, 7-31-14]

13.14.10.24 CONDOMINIUM ENDORSEMENT TO OWNER'S

POLICY: Upon request, the insuring company or its agent may issue condominium endorsement to owner's policy, NM form 30 for a premium of [~~twenty-five dollars (\$25.00)~~] fifty dollars (\$50.00). Paragraph 3 of NM form 30 may be deleted at the option of the insurer.

Each insurer shall establish its written underwriting requirements for such deletion and shall furnish its agent(s) written instructions relating thereto.

[3-1-89, 6-1-98; 13.14.10.24 NMAC - Rn, 13 NMAC 14.10.24, 5-15-00; A, 5-31-00; A, 7-31-14]

13.14.10.30 REVOLVING CREDIT - INCREASED CREDIT LIMIT ENDORSEMENT:

A loan policy insuring a revolving loan may be endorsed to increase the amount of insurance (provided the original mortgage complies with [NMSA-1978] Section 48-7-9 NMSA 1978, and a modification of mortgage - modification agreement is properly executed and recorded) upon payment of an endorsement premium of [~~twenty-five dollars (\$25.00)~~] fifty dollars (\$50.00) plus an additional premium calculated by determining the difference between the charge for a loan policy in the amount of the current amount of insurance before the credit limit is increased, and the charge for a loan policy in the amount of the increased credit limit utilizing the appropriate brackets in the schedule of basic premium rates in effect as of the date of the endorsement. The minimum combined charge for this endorsement is fifty dollars (\$50.00).

[4-1-96, 6-1-98; 13.14.10.30 NMAC - Rn, 13 NMAC 14.10.30, 5-15-00; A, 5-31-00; A, 7-31-14]

13.14.10.32 DOWN DATE ENDORSEMENT TO RESIDENTIAL LIMITED COVERAGE JUNIOR LOAN POLICY:

A. The down date endorsement to residential limited coverage junior loan policy, NM form 46, may be issued one or more times after issuance of an ALTA residential limited coverage junior loan policy (NM form 45). The premium for the issuance of each NM form 46 endorsement is [~~twenty-five dollars (\$25.00)~~] fifty dollars (\$50.00). NM form 46 may not be issued more than one year after the date of policy stated in the ALTA residential limited coverage junior loan policy (NM form 45).

B. Paragraph B of NM form 46 shall describe the insured mortgage setting forth the date of recording of the insured's mortgage. This endorsement may also be issued solely for update purposes, prior to recordation of the insured mortgage by inserting the word "None" at the end of Paragraph B and by deleting the phrase "date of endorsement is the date shown above or the date of recording of the insured's mortgage, whichever is later" (if it appears on the NM form 46 endorsement after "date of endorsement").

C. Upon request of the

named insured and the proper recording of all necessary documents meeting insurer's underwriting standards, the amount of the loan secured by the insured's mortgage insurance previously stated in the ALTA residential limited coverage junior loan policy (NM form 45) may be increased by adding a Paragraph D. It shall read as follows: "D. The amount of insurance of the policy is hereby amended to be \$____," subject to the payment of the applicable premium for the additional insurance. The additional premium (in addition to the premium for the NM form 46) shall be the difference between the premium from the amount of insurance stated in the ALTA residential limited coverage junior loan policy (NM form 45) and the amount of insurance stated in Paragraph D of NM form 46, calculated pursuant to 13.14.9.29 NMAC.

[6-1-98; 13.14.10.32 NMAC - Rn, 13 NMAC 14.10.32, 5-15-00; A, 5-31-00; A, 7-31-14]

13.14.10.33 REVOLVING CREDIT/VARIABLE RATE ENDORSEMENT TO RESIDENTIAL LIMITED COVERAGE JUNIOR

LOAN POLICY: The revolving credit/variable rate endorsement to residential limited coverage junior loan policy, NM form 47, may be issued when NM form 46 is issued. It may also be issued when it is incorporated in NM form 46 by describing the insured's mortgage in paragraph B and checking the appropriate box in paragraph C. The premium for the issuance of NM form 47, or its incorporation into NM form 46, is [~~twenty-five dollars (\$25.00)~~] fifty dollars (\$50.00).

[6-1-98; 13.14.10.33 NMAC - Rn, 13 NMAC 14.10.33, 5-15-00; A, 5-31-00; A, 7-31-14]

13.14.10.36 LAND ABUTS STREET ENDORSEMENT: When a "land abuts street" endorsement, NM form 51, is issued pursuant to 13.14.8.17 NMAC on either owner's policies or loan policies, the premium for each endorsement shall be [~~twenty-five dollars (\$25.00)~~] fifty dollars (\$50.00) in addition to the premium charged for the policy.

[13.14.10.36 NMAC - N, 5-15-00; A, 5-31-00; A, 7-31-14]

13.14.10.37 LOCATION ENDORSEMENT: When a "location" endorsement, NM form 52, is issued pursuant to 13.14.8.18 NMAC, the premium for each endorsement shall be [~~twenty-five dollars (\$25.00)~~] fifty dollars (\$50.00) in addition to the premium charged for the policy.

[13.14.10.37 NMAC - N, 5-15-00; A, 5-31-00; A, 9-15-09; A, 7-31-14]

13.14.10.38 SAME AS SURVEY ENDORSEMENT: When a “same as survey” endorsement, NM form 78, or a “same as portion of survey” endorsement, NM form 79, is issued pursuant to 13.14.8.19 NMAC, the premium for each endorsement shall be [~~twenty-five dollars (\$25.00)~~] fifty dollars (\$50.00) in addition to the premium charged for the policy. [13.14.10.38 NMAC - N, 5-15-00; A, 5-31-00; A, 09-15-10; A, 7-31-14]

13.14.10.40 NAMED INSURED ENDORSEMENT: When a named insured endorsement, NM form 55, is requested for an owner’s policy or leasehold owner’s policy issued on or after August 15, 2001, there shall be no charge for the endorsement. When a named insured endorsement, NM form 55, is issued or requested for an owner’s policy or leasehold owner’s policy issued prior to August 15, 2001, the premium charge for issuance of the endorsement shall be [~~twenty-five dollars (\$25.00)~~] fifty dollars (\$50.00). [13.14.10.40 NMAC - N, 8-1-01; A, 3-1-02; A, 8-17-09; A, 7-31-14]

13.14.10.41 FIRST LOSS -MULTIPLE PARCEL TRANSACTIONS ENDORSEMENT: When a first loss - multiple parcel transactions endorsement, NM form 58, is issued pursuant to 13.14.8.21 NMAC, the premium for each endorsement shall be [~~twenty-five dollars (\$25.00)~~] fifty dollars (\$50.00) in addition to the premium charged for the policy. [13.14.10.41 NMAC - N, 7-1-03; A, 10-1-12; A, 7-31-14]

13.14.10.43 AGGREGATION ENDORSEMENT: When an aggregation endorsement, NM form 60 or NM form 60.1, is issued pursuant to 13.14.8.23 NMAC, the premium for each endorsement shall be [~~twenty-five dollars (\$25.00)~~] fifty dollars (\$50.00) in addition to the premium charged for the policy. [13.14.10.43 NMAC - N, 7-1-03; A, 10-1-12; A, 7-31-14]

13.14.10.44 FOUNDATION ENDORSEMENT: When a foundation endorsement, NM form 61, is issued pursuant to 13.14.8.24 NMAC, the premium for each endorsement shall be [~~twenty-five dollars (\$25.00)~~] fifty dollars (\$50.00) for one-to-four family residential policies and fifty dollars (\$50.00) for commercial policies in addition to the premium charged for the policy. [13.14.10.44 NMAC - N, 7-1-04; A, 7-31-14]

13.14.10.48 ZONING ENDORSEMENT, COMPLETED

STRUCTURE/ZONING ENDORSEMENT LAND UNDER DEVELOPMENT: When a zoning endorsement, completed structure (NM form 65), or a zoning endorsement, land under development (NM 65.1) is issued pursuant to 13.14.8.27 NMAC, the premium shall be 23% of the full basic premium rate. Agents shall receive commissions pursuant to [~~Rule~~] 13.14.3.11 NMAC for liabilities up to \$27,000,000.00; agents’ retention shall be zero for liabilities greater than \$27,000,000.00. In no case shall the premium charge for the issuance of NM form 65 be less than \$250.00. When issuing multiple zoning endorsements simultaneously on an owner’s policy and a loan policy in a single transaction, only one premium shall be charged calculated on the policy with the highest amount of insurance. [13.14.10.48 NMAC - N, 7-1-05; A, 7-31-14]

13.14.10.49 ACCESS AND ENTRY ENDORSEMENT: When an access and entry endorsement, NM form 67, is issued pursuant to 13.14.8.28 NMAC, the premium for the endorsement for each street, road, or highway shall be [~~twenty-five dollars (\$25.00)~~] fifty dollars (\$50.00). [13.14.10.49 NMAC - N, 7-1-06; A, 7-31-14]

13.14.10.50 INDIRECT ACCESS AND ENTRY ENDORSEMENT: When an “indirect access and entry” endorsement, NM form 68, is issued pursuant to 13.14.8.29 NMAC on either owner’s policies or loan policies, the premium for each endorsement shall be [~~twenty-five dollars (\$25.00)~~] fifty dollars (\$50.00) in addition to the premium charged for the policy. [13.14.10.50 NMAC - N, 09-15-10; A, 7-31-14]

13.14.10.51 UTILITY ACCESS ENDORSEMENT: When a “utility access” endorsement, NM form 69, is issued pursuant to 13.14.8.30 NMAC on either owner’s policies or loan policies, the premium for each endorsement shall be [~~twenty-five dollars (\$25.00)~~] fifty dollars (\$50.00) in addition to the premium charged for the policy. [13.14.10.51 NMAC - N, 09-15-10; A, 7-31-14]

13.14.10.52 COMMERCIAL ENVIRONMENTAL PROTECTION LIEN ENDORSEMENT: When a “commercial environmental protection lien” endorsement, NM form 70, is issued pursuant to 13.14.8.31 NMAC on either owner’s policies or loan policies, the premium for each endorsement shall be [~~twenty-five dollars (\$25.00)~~] fifty dollars

(\$50.00) in addition to the premium charged for the policy. [13.14.10.52 NMAC - N, 09-15-10; A, 7-31-14]

13.14.10.53 REVERSE MORTGAGE ENDORSEMENT: When a reverse mortgage endorsement (NM form 71) is issued pursuant to 13.14.8.32 NMAC, the premium for the endorsement shall be [~~twenty-five dollars (\$25.00)~~] fifty dollars (\$50.00) in addition to the premium charged for the policy. [13.14.10.53 NMAC - N, 09-15-10; A, 7-31-14]

13.14.10.54 SINGLE TAX PARCEL ENDORSEMENT: When a “single tax parcel” endorsement, NM form 72, is issued pursuant to 13.14.8.33 NMAC on either owner’s policies or loan policies, the premium for each endorsement shall be [~~twenty-five dollars (\$25.00)~~] fifty dollars (\$50.00) in addition to the premium charged for the policy. [13.14.10.54 NMAC - N, 09-15-10; A, 7-31-14]

13.14.10.55 MULTIPLE TAX PARCEL ENDORSEMENT: When a “multiple tax parcel” endorsement, NM form 73, is issued pursuant to 13.14.8.34 NMAC on either owner’s policies or loan policies, the premium for each endorsement shall be [~~twenty-five dollars (\$25.00)~~] fifty dollars (\$50.00) in addition to the premium charged for the policy. [13.14.10.55 NMAC - N, 09-15-10; A, 7-31-14]

13.14.10.56 DOING BUSINESS ENDORSEMENT: When a “doing business” endorsement, NM form 74, is issued pursuant to 13.14.8.35 NMAC on loan policies, the premium for each endorsement shall be [~~twenty-five dollars (\$25.00)~~] fifty dollars (\$50.00) in addition to the premium charged for the policy. [13.14.10.56 NMAC - N, 09-15-10; A, 7-31-14]

13.14.10.57 SUBDIVISION ENDORSEMENT: When a “subdivision” endorsement, NM form 75, is issued pursuant to 13.14.8.36 NMAC on either owner’s policies or loan policies, the premium for each endorsement shall be [~~twenty-five dollars (\$25.00)~~] fifty dollars (\$50.00) in addition to the premium charged for the policy. [13.14.10.57 NMAC - N, 09-15-10; A, 7-31-14]

13.14.10.58 EASEMENT - DAMAGE OR ENFORCED REMOVAL ENDORSEMENT: When a “easement-damage or forced removal” endorsement,

NM form 76, is issued pursuant to 13.14.8.37 NMAC on either owner's policies or loan policies, the premium for each endorsement shall be ~~[twenty-five dollars (\$25.00)]~~ fifty dollars (\$50.00) in addition to the premium charged for the policy.
 [13.14.10.58 NMAC - N, 09-15-10; A, 7-31-14]

13.14.10.59 CO-INSURANCE - SINGLE POLICY ENDORSEMENT: When a "co-insurance single policy" endorsement, NM form 77, is issued pursuant to 13.14.8.38 NMAC on either owner's policies or loan policies, the premium for each endorsement shall be ~~[twenty-five dollars (\$25.00)]~~ fifty dollars (\$50.00) in addition to the premium charged for the policy.
 [13.14.10.59 NMAC - N, 09-15-10; A, 7-31-14]

NEW MEXICO OFFICE OF SUPERINTENDENT OF INSURANCE

This is an amendment to 13.14.17 NMAC, Sections 1 and 12, effective 7-31-14.

13.14.17.1 ISSUING AGENCY: ~~[Public Regulation Commission, Insurance Division, Title Insurance Bureau.]~~ Office of Superintendent of Insurance, Title Insurance Bureau.
 [13.14.17.1 NMAC - Rp, 13.14.17.1 NMAC, 7-1-06; A, 7-31-14]

13.14.17.12 FORM 3 - TRANSACTION REPORT:

NEW MEXICO TITLE INSURERS STATISTICAL REPORT FORM 3 - TRANSACTION REPORT For the Calendar Year Ending December 31, 20__ NEW MEXICO EXPERIENCE ONLY							
Insurance Company							For Underwriters That Charge Rates Below the Promulgated Rates
NM Form No.	Transaction Code	Transaction Type	NMAC Rate Provision	No. of Transactions	Direct Premiums Written	Dependent on Basic Premium Rate?	Direct Premiums As If They Had Been Written at Promulgated Rates
none	0001	Charge for Additional Chain of Title	13.14.9.16			No	
none	0002	Charge for Unplatted Tract of Unusual Complexity	13.14.9.16			Yes	
none	0003	Abstract Retirement Credit	13.14.9.24			Yes	
none	0004	Loan Policy [Insuring Construction Policy] - Mechanic's Lien Coverage With Evidence of Priority	13.14.9.40 [G] E			No	
none	0005	Loan Policy [Insuring Construction Policy] - Mechanic's Lien Coverage Without Evidence of Priority	13.14.9.40 [G] E			Yes	
none	0006	Owner's Policy - Mechanic's Lien Coverage - Filing Period Expired	13.14.10.9A			No	
none	0007	Owner's Policy - Mechanic's Lien Coverage - Filing Period Not Expired	13.14.10.9B			Yes	
none	0008	Survey Coverage Endorsement	13.14.10.10			Yes	
none	0009	Duplicate Original Policy	13.14.9.33			No	
none	0013	Cancellation Fee	13.14.9.19B			No	
1	0101	Owner's Policy	13.14.9.20			Yes	
1	0102	Owner's Policy - With Bulk Rate	13.14.9.23			Yes	
1	0103	Multiple Owners on Same Land - Simultaneous Issue	13.14.9.32			Yes	
1	0104	Replacement Owner's Policy	13.14.9.26			Yes	
1	0110	Owner's Policy - Reissue (10% Discount)	13.14.9.35			Yes	

<u>2</u>	<u>0205</u>	<u>Loan Policy Insuring Construction Loan</u>	<u>13.14.9.40A</u>			<u>No</u>	
<u>2</u>	<u>0206</u>	<u>Loan Policy Insuring Construction Loan Extension</u>	<u>13.14.9.40B</u>			<u>No</u>	
2	0240	Loan Policy - Substitution Rate (less than 2 years - 40%)	13.14.9.39			Yes	
2	0245	Loan Policy - Substitution Rate (more than 2 years, less than 3 - 45%)	13.14.9.39			Yes	
2	0250	Loan Policy - Substitution Rate (more than 3 years, less than 4 - 50%)	13.14.9.39			Yes	
2	0255	Loan Policy - Substitution Rate (more than 4 years, less than 5 - 55%)	13.14.9.39			Yes	
2	0260	Loan Policy - Substitution Rate (more than 5 years, less than 6 - 60%)	13.14.9.39			Yes	
2	0265	Loan Policy - Substitution Rate (more than 6 years, less than 7 - 65%)	13.14.9.39			Yes	
2	0270	Loan Policy - Substitution Rate (more than 7 years, less than 8 - 70%)	13.14.9.39			Yes	
2	0275	Loan Policy - Substitution Rate (more than 8 years, less than 9 - 75%)	13.14.9.39			Yes	
2	0280	Loan Policy - Substitution Rate (more than 9 years, less than 10 - 80%)	13.14.9.39			Yes	
3	0300	Construction Loan Policy	13.14.9.40A			Yes	
6	0600	Commitment for Title Insurance	13.14.9.19A			No	
6.1	0601	Plain Language Commitment for Title Insurance	13.14.9.19A			No	
9	0900	Notice of Availability of Owner's Title Insurance	None			No	
10	1000	Facultative Reinsurance Agreement	None			No	
11	1101	Construction Loan Extension Endorsement	13.14.9.40B			No	
11	1102	Pending Disbursement Clause - Subsequent Attachment	13.14.9.40E			No	
11	1103	Pending Disbursement Clause - Simultaneous Insertion or Attachment	13.14.9.40E			No	
11	1104	Correction/Multipurpose Endorsement	13.14.8.8			No	
11	1105	Renewal, Extension & Partial Release Endorsement	13.14.10.20			No	
11	1106	Extension of Commitment for title Insurance	13.14.9.19A			No	
11	1108	Increase in Coverage	13.14.6.8D			Yes	
12	1200	Condominium Endorsement - All Assessments (ALTA 4-06)	13.14.10.14			No	
13	1300	Planned Unit Development Endorsement - All Assessments (ALTA 5-06)	13.14.10.15			No	

13.1	1301	Planned Unit Development Endorsement – Unpaid Assessments (ALTA 5.1-06)	13.14.10.15			No	
14	1400	Variable Rate Mortgage Endorsement (ALTA 6-06)	13.14.10.12			No	
15	1500	Variable Rate Mortgage Endorsement - Negative Amortization (ALTA 6.2-06)	13.14.10.12			No	
16	1600	Manufactured Housing Unit Endorsement (ALTA 7-06)	13.14.10.13			No	
16.1	1601	Manufactured Housing Unit (Conversion Loan) Endorsement (ALTA 7.1-06)	13.14.10.13			No	
16.2	1602	Manufactured Housing Unit (Conversion Owner's) Endorsement (ALTA 7.2-06)	13.14.10.13			No	
17	1700	Revolving Credit Endorsement	13.14.10.12			No	
18	1800	Construction Loan Policy Endorsement A	13.14.9.40D			Yes	
20	2000	Leasehold Owner's Endorsement (to create policy) (ALTA 13-06, 04-02- 12)	13.14.10.19			No	
20	2003	Leasehold Owners Policy - Simultaneous Issue with Owner's Policy	13.14.9.31			Yes	
20	2010	Leasehold Owner's Policy - Reissue (10% Discount)	13.14.9.35			Yes	
20	2015	Leasehold Owner's Policy - Reissue (15% Discount)	13.14.9.35			Yes	
20	2020	Leasehold Owner's Policy - Reissue (20% Discount)	13.14.9.35			Yes	
20	2025	Leasehold Owner's Policy - Reissue (25% Discount)	13.14.9.35			Yes	
21	2100	Leasehold Loan Endorsement (to create policy) (ALTA 13.1-06, 04-02-12)	13.14.10.19			No	
21.1	2101	Leasehold Loan Policy – Simultaneous Issue with Leasehold Owner's Policy	13.14.9.30			No	
22	2200	Pending Disbursement Down Date Endorsement	13.14.10.18			No	
23	2300	Pending Improvements Endorsement	13.14.10.23			No	
24	2400	Assignment Endorsement (ALTA 10-06)	13.14.10.8			No	
24.1	2401	Assignment and Downdate Endorsement (ALTA 10.1-06)	13.14.10.8			No	
25	2500	Additional Advance Endorsement	13.14.10.11			No	
26	2600	Partial Coverage Endorsement	None			No	
28	2800	Non-Imputation - Full Equity Transfer Endorsement (ALTA 15-06)	13.14.10.21			Yes	
28.1	2801	Non-Imputation – Additional Interest Endorsement (ALTA 15.1-06)	13.14.10.21			Yes	
28.2	2802	Non-Imputation – Partial Equity Transfer Endorsement (ALTA 15.2-06)	13.14.10.21			Yes	

29	2900	Environmental Protection Lien Endorsement (ALTA 8.1-06)	13.14.10.22			No	
30	3000	Condominium Endorsement Unpaid Assessments (ALTA 4.1-06)	13.14.10.24			No	
31	3100	Owner's Leasehold Conversion Endorsement (to create policy)	13.14.9.38			Yes	
33	3300	Change of Name Endorsement	None			No	
34	3400	U.S. Policy, ALTA [1994] (12-03-12)	13.14.9.25			Yes	
41	4100	Limited Pre-Foreclosure Title Insurance Policy ALTA (12-03-12)	13.14.9.28			Yes	
42	4200	Limited Pre-Foreclosure Title Insurance Policy Down Date Endorsement ALTA (12-03-12)	13.14.10.18			No	
43	4300	Insuring Around Endorsement	13.14.8.13			No	
44	4400	Revolving Credit, Increased Credit Limit Endorsement	13.14.10.30			No	
45	4500	Residential Limited Coverage Junior Loan Policy ALTA (Rev. 08-01-12)	13.14.9.29			No	
46	4600	Down Date Endorsement to Residential Limited Coverage Junior Loan Policy ALTA JR1 (08-01-12)	13.14.10.32			No	
47	4700	[Revolving Credit, Variable Rate] Endorsement to Residential Limited Coverage Junior Loan Policy (ALTA JR2) <u>Future Advances (08-01-12)</u>	13.14.10.33			No	
48	4800	Truth-in-Lending Endorsement (ALTA 2-06)	13.14.10.31			Yes	
50	5000	Restrictions, Encroachments and Minerals Endorsement - Loan Policy (ALTA 9-06)	13.14.10.34			Yes	
50.1	5001	Restrictions Encroachments, Minerals – Loan Policy Endorsement (ALTA 9.3-06)	13.14.10.34			Yes	
51	5100	Land Abuts Street Endorsement	13.14.10.36			No	
52	5200	Location Endorsement	13.14.10.37			No	
54	5400	Contiguity Single Parcel Endorsement	13.14.10.39			No	
55	5500	Named Insured Endorsement	13.14.10.40			No	
56	5600	Restrictions, Encroachments, Minerals– Owner's Policy (Unimproved Land) Endorsement (ALTA 9.1-06)	13.14.10.34			Yes	
56.1	5601	Restrictions, Encroachments, Minerals – Owner's Policy – (Unimproved Land) Endorsement (ALTA 9.4-06)	13.14.10.34			Yes	

57	5700	Restrictions, Encroachments, Minerals – Owner’s Policy (Improved Land) Endorsement (ALTA 9.2-06)	13.14.10.34			Yes	
57.1	5701	Restrictions, Encroachments, and Minerals Owner’s Policy – (Improved Land) Endorsement (ALTA 9.5-06)	13.14.10.34			Yes	
58	5800	First Loss - Multiple Parcel Transactions Endorsement (ALTA 20-06)	13.14.10.41			No	
60	6000	Aggregation Endorsement (ALTA 12-06)	13.14.10.43			No	
60.1	6001	Aggregation Endorsement (ALTA 12.1-06)	[None] 13.14.10.43			No	
61	6100	Foundation Endorsement	13.14.10.44			No	
62	6200	Assignment of Rents/Leases Endorsement	13.14.10.45			No	
63	6300	Short Form Residential Loan Policy (ALTA form revised [2006]12-03-12)	13.14.9.22			Yes	
64	6400	Zoning - Unimproved Land Endorsement (ALTA 3-06)	13.14.10.47			Yes	
65	6500	Zoning - Completed Structure Endorsement (ALTA 3.1-06)	13.14.10.48			Yes	
66	6600	Contiguity - Multiple Parcels Endorsement (ALTA 19-06)	13.14.10.39			No	
67	6700	Access and Entry Endorsement (ALTA 17)	13.14.10.49			No	
68	6800	Indirect Access and Entry Endorsement (ALTA 17.1-06)	13.14.10.50			No	
69	6900	Utility Access Endorsement (ALTA 17.2-06)	13.14.10.51			No	
70	7000	Commercial Environmental Protection Lien Endorsement (ALTA 8.2-06)	13.14.10.52			No	
71	7100	Reverse Mortgage Endorsement (ALTA 14.3-06)	13.14.10.53			No	
72	7200	Single Tax Parcel Endorsement (ALTA 18-06)	13.14.10.54			No	
73	7300	Multiple Tax Parcel Endorsement (ALTA 18.1-06)	13.14.10.55			No	
74	7400	Doing Business Endorsement (ALTA 24-06)	13.14.10.56			No	
75	7500	Subdivision Endorsement (ALTA 26-06)	13.14.10.57			No	
76	7600	Easement - Damage or Enforced Removal Endorsement (ALTA 28-06)	13.14.10.58			No	
77	7700	Co-Insurance - Single Policy Endorsement (ALTA 23-06)	13.14.10.59			No	
78	7800	Same as Survey Endorsement (ALTA 25-06)	13.14.10.38			No	
79	7900	Same as Portion of Survey Endorsement (ALTA 25.1-06)	13.14.10.38			No	
80	8000	Mortgage Modification Endorsement (ALTA 11-06)	13.14.10.20			No	
83	8300	Construction Loan – [Loss of Priority] Endorsement (ALTA [32-06] 32.0-06, 2-3-11)	None			Yes	
83.1	8301	Construction Loan – [Loss of Priority] – Direct Payment Endorsement (ALTA 32.1-06, 4-2-13)	None			No	

83.2	8302	Construction Loan – Insured’s Direct Payment Endorsement (ALTA 32.2-06, 4-2-13)	None			No	
84	8400	Disbursement Endorsement (ALTA 33-06, 2-3-11)	None 13.14.10.18			No	
85	8500	Identified Risk Coverage Endorsement	None			No	
86	8600	Policy Authentication Endorsement (ALTA 39-06, 04-02-12)	13.14.18.111			No	
87	8700	Zoning – Land Under Development Endorsement (ALTA 3.2-06)	13.14.10.48			Yes	
2	9240	Loan Policy - Statutory Rate (less than 3 years - 40%)	59A-30-6.1 NMSA 1978			Yes	
2	9250	Loan Policy - Statutory Rate (more than 3 years, less than 5 - 50%)	59A-30-6.1 NMSA 1978			Yes	
2	9260	Loan Policy - Statutory Rate (more than 5 years, less than 10 - 60%)	59A-30-6.1 NMSA 1978			Yes	
2	9280	Loan Policy - Statutory Rate (more than 10 years, less than 20 - 80%)	59A-30-6.1 NMSA 1978			Yes	

TOTAL:				
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Crosscheck with Form I:	
Difference:	

Explanation for Difference (if any):

[13.14.17.12 NMAC - Rp, 13.14.17.12 NMAC, 7-1-06; A, 8-17-09; A, 09-15-10; A, 10-1-12; A, 7-31-14]

NEW MEXICO OFFICE OF SUPERINTENDENT OF INSURANCE

This is an amendment to 13.14.18 NMAC, Sections 1, 3, 9, 13, 14, 15, 16, 36, 37, 53, 54, 60, 61, 64, 65, 66, 85, 87, 103, 104, 107, 108, 109, 110, 111, 112 and 113, effective 7-31-14.

13.14.18.1 ISSUING AGENCY:
[Public Regulation Commission, Insurance Division, Title Insurance Bureau.] Office of Superintendent of Insurance, Title Insurance Bureau.
[13.14.18.1 NMAC - Rn, 13 NMAC 14.2.1 & A, 5-15-00; A, 7-31-14]

13.14.18.3 STATUTORY AUTHORITY: [NMSA 1978] Sections 59A-30-4 NMSA 1978 and 59A-30-5 NMSA 1978.
[13.14.18.3 NMAC - Rn, 13 NMAC 14.2.3, 5-15-00; A, 7-31-14]

13.14.18.9 ALTERATION OR SUBSTITUTION OF FORMS PROHIBITED:

A. No person, firm or organization may alter or otherwise change any title insurance form promulgated by the superintendent, or use any non-promulgated endorsement or rider, except (1) upon public hearing called for such purpose and upon a determination by the superintendent that the same be proper, or (2) in a manner specifically authorized by these regulations as amended from time to time.

B. Nothing in this regulation shall prevent a title insurer from (1) adding blanks, spaces, labels or brief instructions to the promulgated forms for the purpose of collecting statistical data or (2) from typesetting a promulgated form utilizing type styles, margins or paginations different from the promulgated forms; provided, however, that all language contained in each promulgated form must appear in each form printed or used by each title insurance underwriter or agent verbatim, and further provided that nothing may be added to a promulgated title insurance form which changes any of the terms of such form except as specifically provided by these regulations.

C. Nothing herein shall prohibit the use of the forms in any

language other than English, provided, however, that any translated form shall contain the following language in bold-face type on the first page of the form in English and in the translated language: “This translation is provided as a convenience only. The English language version of this form shall control and shall be the operative document for all legal purposes.”

D. The following language shall be added at the top of schedule A of all commitments and policies in a font not less than the font size of the remaining print of schedule A and be in bold italicized print: “Pursuant to the New Mexico title insurance law [NMSA 1978] Section 59A-30-4 NMSA 1978, control and supervision by superintendent and title insurance regulation 13.14.18.10 NMAC, no part of any title insurance commitment, policy or endorsement form promulgated by the New Mexico superintendent of insurance may be added to, altered, inserted in or typed upon, deleted or otherwise changed from the title insurance form promulgated by the New Mexico superintendent of insurance, nor issued by a person or

company not licensed with regard to the business of title insurance by the New Mexico superintendent of insurance, nor issued by a person or company who does not own, operate or control an approved title abstract plant as defined by New Mexico law and regulations for the county wherein the property is located.”

[6-16-86, 4-3-95; 13.14.18.9 NMAC - Rn, 13 NMAC 14.2.10, 5-15-00; A, 10-1-12; A, 7-31-14]

13.14.18.13 APPROVED FORMS: The following are the only title insurance forms promulgated for use in New Mexico:

NM FORM NO.	ALTA FORM NO. & DATE	NAME OF FORM	NMAC NO.
1	6-17-06	Owner's Policy	13.14.18.14
2	6-17-06	Loan Policy	13.14.18.15
[3	10-17-92	Construction Loan Policy [Reserved]	13.14.18.16
6	6-17-06	Commitment for Title Insurance	13.14.18.19
6.1	6-17-06	Plain Language Commitment for Title Insurance	13.14.18.19
		[Reserved]	13.14.18.20
8	12.1-06	Aggregation Endorsement	13.14.18.21
9		Notice of Availability of Owner's Title Insurance	13.14.18.22
10	9-24-94	Facultative Reinsurance Agreement	13.14.18.23
11		Multipurpose Endorsement	13.14.18.24
12	4-06, 10-16-08	Condominium Endorsement All Assessments	13.14.18.25
13	5-06, 10-16-08	Planned Unit Development Endorsement All Assessments	13.14.18.26
13.1	5.1-06 10-16-08	Planned Unit Development Endorsement Unpaid Assessments	13.14.18.27
14	6-06, 6-17-06	Variable Rate, Mortgage Endorsement	13.14.18.28
15	6.2-06, 6-17-06	Variable Rate Mortgage - Negative Amortization Endorsement	13.14.18.29
16	7-06, 6-17-06	Manufactured Housing Unit Endorsement	13.14.18.30
16.1	7.1-06, 6-17-06	Manufactured Housing - Conversion (Loan) Endorsement	13.14.18.31
16.2	7.2-06, 6-17-06	Manufactured Housing - Conversion (Owner's) Endorsement	13.14.18.32
17		Revolving Credit Endorsement	13.14.18.33
18	A, Rev. 6-1-87	Construction Loan Policy Endorsement A	13.14.18.34
		[Reserved]	13.14.18.35
20	13-06, [6-17-06] <u>4-02-12</u>	Leasehold Owner's Endorsement	13.14.18.36
21	13.1-06, [6-17-06] <u>4-02-12</u>	Leasehold Loan Endorsement	13.14.18.37
22		Pending Disbursement Down Date Endorsement	13.14.18.38
23		Pending Improvements Endorsement	13.14.18.39
24	10-06, 6-17-06	Assignment Endorsement	13.14.18.40
24.1	10.1-06, 10-16-08	Assignment and Down Date Endorsement	13.14.18.41
25		Additional Advance Endorsement	13.14.18.42
26		Partial Coverage Endorsement	13.14.18.43
		[Reserved]	13.14.18.44
28	15-06, 6-17-06	Non-Imputation - Full Equity Transfer Endorsement	13.14.18.45
28.1	15.1-06, 6-17-06	Non-Imputation - Additional Interest Endorsement	13.14.18.46
28.2	15.2-06, 6-17-06	Non-Imputation - Partial Equity Transfer Endorsement	13.14.18.47
29	8.1-06, 6-17-06	Environmental Protection Lien Endorsement	13.14.18.48
30	4.1-06, 6-17-06	Condominium Endorsement Unpaid Assessments	13.14.18.49
31		Owner's Leasehold Conversion Endorsement	13.14.18.50
		[Reserved]	13.14.18.51
33		Change of Name Endorsement	13.14.18.52
34	[1991] <u>12-3-12</u>	U.S. Policy	13.14.18.53
35	Rev. 7-01-08	Notice to Purchaser Insured	13.14.18.54

41	<u>12-3-12</u>	Limited Pre-Foreclosure Title Insurance Policy	13.14.18.60
42	<u>12-3-12</u>	Limited Pre-Foreclosure Title Insurance Policy Down Date Endorsement	13.14.18.61
43		Insuring Around Endorsement	13.14.18.62
44		Revolving Credit, Increased Credit Limit Endorsement	13.14.18.63
45	[10-19-96] <u>8-1-12</u>	Residential Limited Coverage Junior Loan Policy	13.14.18.64
46	[10-19-96] <u>8-1-12</u>	Down Date Endorsement to Residential Limited Coverage Junior Loan Policy <u>JR1</u>	13.14.18.65
47	[10-19-96] <u>8-1-12</u>	Endorsement to Residential Limited Coverage Junior Loan Policy <u>JR 2 (Future Advance)</u>	13.14.18.66
48	2-06, 6-17-06	Truth-in-Lending Endorsement	13.14.18.67
49		Notice of Availability of Future Increase in Coverage and Potential Premium Discounts for Future Policies	13.14.18.68
50	9-06, 6-17-06	Restrictions, Encroachments, Minerals - Loan Policy Endorsement	13.14.18.69
50.1	9.3-06, 6-17-06	Restrictions, Encroachments, Minerals - Loan Policy Endorsement	13.14.18.70
51		Land Abuts Street Endorsement	13.14.18.71
52		Location Endorsement	13.14.18.72
		[Reserved]	13.14.18.73
54	19.1-06, 6-17-06	Contiguity Single Parcel Endorsement	13.14.18.74
55		Named Insured Endorsement	13.14.18.75
56	9.1-06, 6-17-06	Restrictions, Encroachments, Minerals - Owner's Policy (Unimproved Land) Endorsement	13.14.18.76
56.1	9.4-06, 6-17-06	Restrictions, Encroachments, Minerals Endorsement (Owner's Policy -- Unimproved Land)	13.14.18.77
57	9.2-06, 6-17-06	Restrictions, Encroachments, Minerals - Owner's Policy (Improved Land) Endorsement	13.14.18.78
57.1	9.5-06, 6-17-06	Restrictions, Encroachments, Minerals (Owner's Policy - Improved Land) Endorsement	13.14.18.79
58	20-06, 6-17-06	First Loss - Multiple Parcel Transactions Endorsement	13.14.18.80
		[Reserved]	13.14.18.81
60	12-06, 6-17-06	Aggregation Endorsement	13.14.18.82
60.1	12.1-06	Aggregation Endorsement	13.14.18.21
61		Foundation Endorsement	13.14.18.83
62		Assignment of Rents/Leases Endorsement	13.14.18.84
63	[6-17-06] <u>12-3-12</u>	Short Form Residential Loan Policy	13.14.18.85
64	3-06, Rev. 6-17-06	Zoning - Unimproved Land Endorsement	13.14.18.86
65	3.1-06, Rev. 6-17-06	Zoning - Completed Structure Endorsement	13.14.18.87
66	19-06, 6-17-06	Contiguity - Multiple Parcels Endorsement	13.14.18.88
67	17-06, 6-17-06	Access and Entry Endorsement	13.14.18.89
68	17.1-06, 6-17-06	Indirect Access and Entry Endorsement	13.14.18.90
69	17.2-06, 6-17-06	Utility Access Endorsement	13.14.18.91
70	8.2-06, 6-17-06	Commercial Environmental Protection Lien Endorsement	13.14.18.92
71	14.3-06, 10-22-09	Reverse Mortgage Endorsement	13.14.18.93
72	18-06, 6-17-06	Single Tax Parcel Endorsement	13.14.18.94
73	18.1-06, 6-17-06	Multiple Tax Parcel Endorsement	13.14.18.95
74	24-06, 10-16-08	Doing Business Endorsement	13.14.18.96
75	26-06, 6-17-06	Subdivision Endorsement	13.14.18.97
76	28-06, 10-16-08	Easement - Damage or Enforced Removal Endorsement	13.14.18.98
77	23-06, 6-17-06	Co-Insurance – Single Policy Endorsement	13.14.18.99
78	25-06, 6-17-06	Same as Survey Endorsement	13.14.18.100
79	25.1-06, 6-17-06	Same as Portion of Survey Endorsement	13.14.18.101

80	11-06, 6-17-06	Mortgage Modification Endorsement	13.14.18.102
81	<u>12-01-11</u>	Closing Protection Letter - <u>Single Transaction</u>	13.14.18.103
81.1	<u>12-01-11</u>	Closing Protection Letter - Multiple Transactions	13.14.18.104
		[Reserved]	13.14.18.105
82		Inter-Underwriter Indemnification Agreement	13.14.18.106
83	[32-06] <u>32.0-06</u> , 2-3-11	Construction Loan - [Loss of Priority] Endorsement	13.14.18.107
83.1	32.1-06, [2-3-11] <u>4-2-13</u>	Construction Loan - [Loss of Priority] - Direct Payment Endorsement	13.14.18.108
<u>83.2</u>	<u>32.2-06</u> , <u>4-2-13</u>	<u>Construction Loan – Insured’s Direct Payment Endorsement</u>	<u>13.14.18.109</u>
84	33-06, 2-3-11	Disbursement Endorsement	13.14.18. [+09] <u>110</u>
85		Identified Risk Coverage Endorsement	13.14.18. [+0] <u>111</u>
<u>86</u>	<u>39-06</u>	<u>Policy Authentication Endorsement</u>	<u>13.14.18.111</u>
<u>87</u>	<u>3.2-06</u>	<u>Zoning - Land Under Development Endorsement</u>	<u>13.14.18.112</u>

[6-16-86...4-1-96; 6-1-97, 6-1-98; 13.14.18.13 NMAC - Rn, 13 NMAC 14.2.9 & A, 5-15-00; 13.14.18.13 NMAC - A, 8-1-01; A, 3-1-02; A, 7-1-03; A, 7-1-04; A, 7-1-05; A, 7-1-06; A, 8-1-08; A, 8-17-09; A, 09-15-10; A, 10-1-12; A, 7-31-14]

13.14.18.14 NM FORM 1 - OWNER’S POLICY:

Cover page.

**Owner’s Policy Of Title Insurance
Issued By Blank Title Insurance Company
[NM Form 1; ALTA Form Rev. 2006]**

Any notice of claim and any other notice or statement in writing required to be given to the company under this policy must be given to the company at the address shown in Section 18 of the conditions.

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, BLANK TITLE INSURANCE COMPANY, a blank corporation (the “company”) insures, as of date of policy and, to the extent stated in covered risks 9 and 10, after date of policy, against loss or damage, not exceeding the amount of insurance, sustained or incurred by the Insured by reason of:

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the title. This covered risk includes but is not limited to insurance against loss from
 - (a) A defect in the title caused by
 - (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
 - (ii) failure of any person or entity to have authorized a transfer or conveyance;
 - (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
 - (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
 - (v) a document executed under a falsified, expired, or otherwise invalid power of attorney;
 - (vi) a document not properly filed, recorded, or indexed in the public records including failure to perform those acts by electronic means authorized by law; or
 - (vii) a defective judicial or administrative proceeding.
 - (b) The lien of real estate taxes or assessments imposed on the title by a governmental authority due or payable, but unpaid.
 - (c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the title that would be disclosed by an accurate and complete land survey of the Land. The term ”encroachment” includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.

- 3. Unmarketable Title.
- 4. No right of access to and from the Land.
- 5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (a) the occupancy, use, or enjoyment of the Land;
 - (b) the character, dimensions, or location of any improvement erected on the Land;
 - (c) the subdivision of Land; or
 - (d) environmental protection [~~if a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice~~].

If a notice, describing any part of the land, is recorded in the public records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.

- 6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.
- 7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
- 8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.
- 9. Title being vested other than as stated in Schedule A or being defective
 - (a) as a result of the avoidance in whole or in part, or from a court order providing an alternative remedy, of a transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction vesting Title as shown in Schedule A because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or
 - (b) because the instrument of transfer vesting Title as shown in Schedule A constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records
 - (i) to be timely, or
 - (ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.
- 10. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 9 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.

[Witness clause optional]

Dated: _____

BLANK TITLE INSURANCE COMPANY

_____, **President**

_____, **Secretary**

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

- 1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;

(ii) the character, dimensions, or location of any improvement erected on the Land;

(iii) the subdivision of land; or

(iv) environmental protection;

or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.

(b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.

2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.

3. Defects, liens, encumbrances, adverse claims, or other matters

(a) created, suffered, assumed, or agreed to by the Insured Claimant;

(b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;

(c) resulting in no loss or damage to the Insured Claimant;

(d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or

(e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.

4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is

(a) a fraudulent conveyance or fraudulent transfer; or

(b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.

5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

SCHEDULE A

Name and Address of Title Insurance Company:

[File No.:] Policy No.:

Address Reference:

Amount of Insurance: \$ [Premium: \$]

Date of Policy: [at a.m./p.m.]

1. Name of Insured:

2. The estate or interest in the Land that is insured by this policy is:

3. Title is vested in:

4. The Land referred to in this policy is described as follows:

SCHEDULE B

[File No.] Policy No.

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses that arise by reason of:

1. [Policy may include regional exceptions if so desired by the issuing Company.]

2. [Variable exceptions such as taxes, easements, CC&R's, etc., shown here]

3.

CONDITIONS**1. DEFINITION OF TERMS**

The following terms when used in this policy mean:

(a) "Amount of Insurance": The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b), or decreased by Sections 11 and 12 of these Conditions.

(b) "Date of Policy": The date designated as "Date of Policy" in Schedule A.

(c) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.

(d) "Insured": The Insured named in Schedule A.

(i) The term "Insured" also includes

(A) successors to the Title of the Insured by operation of law as distinguished from purchase, including heirs, devisees, survivors, personal representatives, or next of kin;

(B) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;

(C) successors to an Insured by its conversion to another kind of Entity;

(D) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title

(1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,

(2) if the grantee wholly owns the named Insured,

(3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named

Insured are both wholly-owned by the same person or Entity, or

(4) if the grantee is a trustee or beneficiary of a trust created by a written instrument established by the Insured named in

Schedule A for estate planning purposes.

(ii) With regard to (A), (B), (C), and (D) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured.

(e) "Insured Claimant": An Insured claiming loss or damage.

(f) "Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.

(g) "Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.

(h) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.

(i) "Public Records": Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), "Public Records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.

(j) "Title": The estate or interest described in Schedule A.

(k) "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, (ii) in case Knowledge shall come to an Insured hereunder of any claim of title or interest that is adverse to the Title, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title, as insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

4. PROOF OF LOSS

In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

5. DEFENSE AND PROSECUTION OF ACTIONS

(a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.

(b) The Company shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.

(c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal any adverse judgment or order.

6. DUTY OF INSURED CLAIMANT TO COOPERATE

(a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title or any other matter as insured. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

(b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured Claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance.

To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay.

Upon the exercise by the Company of this option, all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in this subsection, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

(b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.

(i) To pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or

(ii) To pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

8. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

(a) The extent of liability of the Company for loss or damage under this policy shall not exceed the lesser of

(i) the Amount of Insurance; or

(ii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy.

(b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title, as insured,

(i) the Amount of Insurance shall be increased by 10%, and

(ii) the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as of the date it is settled and paid.

(c) In addition to the extent of liability under (a) and (b), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

9. LIMITATION OF LIABILITY

(a) If the Company establishes the Title, or removes the alleged defect, lien, or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title, as insured.

(c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment.

11. LIABILITY NONCUMULATIVE

The Amount of Insurance shall be reduced by any amount the Company pays under any policy insuring a Mortgage to which exception is taken in Schedule B or to which the Insured has agreed, assumed, or taken subject, or which is executed by an Insured after Date of Policy and which is a charge or lien on the Title, and the amount so paid shall be deemed a payment to the Insured under this policy.

12. PAYMENT OF LOSS

When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.

13. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT

(a) Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Title and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies.

If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.

(b) The Company's right of subrogation includes the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.

14. ARBITRATION

Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured. All arbitrable matters when the Amount of Insurance is in excess of \$2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

(a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage that arises out of the status of the Title or by any action asserting such claim shall be restricted to this policy.

(c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.

(d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

16. SEVERABILITY

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

17. CHOICE OF LAW; FORUM

(a) Choice of Law: The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located.

Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title that are adverse to the Insured and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.

(b) Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

18. NOTICES, WHERE SENT

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at [fill in].

NOTE: Bracketed [] material optional

[6-16-86...4-3-95; 13.14.18.14 NMAC - Rn, 13 NMAC 14.6.A.8 through 14.6.A.12, 5-15-00; A, 8-1-08; A, 7-31-14]

13.14.18.15 NM FORM 2 - LOAN POLICY:

Cover page.

**Loan Policy Of Title Insurance
Issued By Blank Title Insurance Company
[NM Form 2; ALTA Form Rev. 2006]**

Any notice of claim and any other notice or statement in writing required to be given to the Company under this Policy must be given to the Company at the address shown in Section 17 of the Conditions.

Covered risks.

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, BLANK TITLE INSURANCE COMPANY, a Blank corporation (the "Company") insures as of Date of Policy and, to the extent stated in Covered Risks 11, 13, and 14, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from
 - (a) A defect in the Title caused by
 - (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
 - (ii) failure of any person or Entity to have authorized a transfer or conveyance;
 - (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
 - (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
 - (v) a document executed under a falsified, expired, or otherwise invalid power of attorney;
 - (vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
 - (vii) a defective judicial or administrative proceeding.
 - (b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
 - (c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
3. Unmarketable Title.
4. No right of access to and from the Land.
5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (a) the occupancy, use, or enjoyment of the Land;
 - (b) the character, dimensions, or location of any improvement erected on the Land;
 - (c) the subdivision of land; or
 - (d) environmental protection if a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.
6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.

7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.

8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.

9. The invalidity or unenforceability of the lien of the Insured Mortgage upon the Title. This Covered Risk includes but is not limited to insurance against loss from any of the following impairing the lien of the Insured Mortgage

- (a) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
- (b) failure of any person or Entity to have authorized a transfer or conveyance;
- (c) the Insured Mortgage not being properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
- (d) failure to perform those acts necessary to create a document by electronic means authorized by law;
- (e) a document executed under a falsified, expired, or otherwise invalid power of attorney;
- (f) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
- (g) a defective judicial or administrative proceeding.

10. The lack of priority of the lien of the Insured Mortgage upon the Title over any other lien or encumbrance.

11. The lack of priority of the lien of the Insured Mortgage upon the Title

- (a) as security for each and every advance of proceeds of the loan secured by the Insured Mortgage over any statutory lien for services, labor, or material arising from construction of an improvement or work related to the Land when the improvement or work is either
 - (i) contracted for or commenced on or before Date of Policy; or
 - (ii) contracted for, commenced, or continued after Date of Policy if the construction is financed, in whole or in part, by proceeds of the loan secured by the Insured Mortgage that the Insured has advanced or is obligated on Date of Policy to advance; and
- (b) over the lien of any assessments for street improvements under construction or completed at Date of Policy.

12. The invalidity or unenforceability of any assignment of the Insured Mortgage, provided the assignment is shown in Schedule A, or the failure of the assignment shown in Schedule A to vest title to the Insured Mortgage in the named Insured assignee free and clear of all liens.

13. The invalidity, unenforceability, lack of priority, or avoidance of the lien of the Insured Mortgage upon the Title

- (a) resulting from the avoidance in whole or in part, or from a court order providing an alternative remedy, of any transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction creating the lien of the Insured Mortgage because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or
- (b) because the Insured Mortgage constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records
 - (i) to be timely, or
 - (ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.

14. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 13 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the Insured Mortgage in the Public Records.

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

BY: _____, **PRESIDENT**

BY: _____, **SECRETARY**

Exclusions from coverage.

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to (i) the occupancy, use, or enjoyment of the Land; (ii) the character, dimensions, or location of any improvement erected on the Land; (iii) the subdivision of land; or (iv) environmental protection; or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risks 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risks 11, 13, or 14); or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
 - (a) a fraudulent conveyance or fraudulent transfer, or
 - (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

Schedule A.

Name and Address of Title Insurance Company:

[File No.]

Policy No.

Loan No.

Address Reference:

Amount of Insurance: \$

[Premium: \$]

Date of Policy: _____ [at a.m./p.m.]

1. Name of Insured:
2. The estate or interest in the Land that is encumbered by the Insured Mortgage is:
3. Title is vested in:
4. The Insured Mortgage and its assignments, if any, are described as follows:
5. The Land referred to in this policy is described as follows:
- [6. This policy incorporates by reference those ALTA endorsements selected below:

- 4-06 [~~(Condominium)~~] (Condominium All Assessments)
- 4.1-06 (Condominium Unpaid Assessments)
- 5-06 [~~(Planned Unit Development)~~] (Planned Unit Development All Assessments)
- 5.1-06 (Planned Unit Development Unpaid Assessments)
- 6-06 (Variable Rate)
- 6.2-06 (Variable Rate--Negative Amortization)
- 8.1-06 (Environmental Protection Lien) Paragraph b refers to the following state statute(s):
- 9-06 (Restrictions, Encroachments, Minerals)
- 13.1-06 (Leasehold Loan)

Schedule B - Exceptions from coverage.

[File No.]
Policy No.

[Except as provided in Schedule B - Part II.] this policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses that arise by reason of:

[PART I

- 1.
- 2.
- 3.
- 4.

PART II

In addition to the matters set forth in Part I of this Schedule, the Title is subject to the following matters, and the Company insures against loss or damage sustained in the event that they are not subordinate to the lien of the Insured Mortgage:]

Conditions.

1. Definition of Terms. The following terms when used in this policy mean:

(a) "Amount of Insurance": The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b) or decreased by Section 10 of these Conditions.

(b) "Date of Policy": The date designated as "Date of Policy" in Schedule A.

(c) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.

(d) "Indebtedness": The obligation secured by the Insured Mortgage including one evidenced by electronic means authorized by law, and if that obligation is the payment of a debt, the Indebtedness is the sum of

(i) the amount of the principal disbursed as of Date of Policy;

(ii) the amount of the principal disbursed subsequent to Date of Policy;

(iii) the construction loan advances made subsequent to Date of Policy for the purpose of financing in whole or in part the construction of an improvement to the Land or related to the Land that the Insured was and continued to be obligated to advance at Date of Policy and at the date of the advance;

(iv) interest on the loan;

(v) the prepayment premiums, exit fees, and other similar fees or penalties allowed by law;

(vi) the expenses of foreclosure and any other costs of enforcement;

(vii) the amounts advanced to assure compliance with laws or to protect the lien or the priority of the lien of the Insured Mortgage before the acquisition of the estate or interest in the Title;

(viii) the amounts to pay taxes and insurance; and

(ix) the reasonable amounts expended to prevent deterioration of improvements; but the Indebtedness is reduced by the total of all

payments and by any amount forgiven by an Insured.

(e) “Insured”: The Insured named in Schedule A.

(i) The term “Insured” also includes

(A) the owner of the Indebtedness and each successor in ownership of the Indebtedness, whether the owner or successor owns the Indebtedness for its own account or as a trustee or other fiduciary, except a successor who is an obligor under the provisions of Section 12(c) of these Conditions;

(B) the person or Entity who has “control” of the “transferable record,” if the Indebtedness is evidenced by a “transferable record,” as these terms are defined by applicable electronic transactions law;

(C) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;

(D) successors to an Insured by its conversion to another kind of Entity;

(E) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title (1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured, (2) if the grantee wholly owns the named Insured, or (3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity;

(F) any government agency or instrumentality that is an insurer or guarantor under an insurance contract or guaranty insuring or guaranteeing the Indebtedness secured by the Insured Mortgage, or any part of it, whether named as an Insured or not;

(ii) With regard to (A), (B), (C), (D), and (E) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured, unless the successor acquired the Indebtedness as a purchaser for value without Knowledge of the asserted defect, lien, encumbrance, or other matter insured against by this policy.

(f) “Insured Claimant”: An Insured claiming loss or damage.

(g) “Insured Mortgage”: The Mortgage described in paragraph 4 of Schedule A.

(h) “Knowledge” or “Known”: Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.

(i) “Land”: The land described in Schedule A, and affixed improvements that by law constitute real property. The term “Land” does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.

(j) “Mortgage”: Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.

(k) “Public Records”: Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), “Public Records” shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.

(l) “Title”: The estate or interest described in Schedule A.

(m) “Unmarketable Title”: Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title or a prospective purchaser of the Insured Mortgage to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.

2. Continuation of insurance. The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured after acquisition of the Title by an Insured or after conveyance by an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

3. Notice of claim to be given by insured claimant. The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, (ii) in case Knowledge shall come to an Insured of any claim of title or interest that is adverse to the Title or the lien of the Insured Mortgage, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title or the lien of the Insured Mortgage, as insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company’s liability to the Insured Claimant

under the policy shall be reduced to the extent of the prejudice.

4. Proof of loss. In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

5. Defense and prosecution of actions.

(a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.

(b) The Company shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title or the lien of the Insured Mortgage, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.

(c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal any adverse judgment or order.

6. Duty of insured claimant to cooperate.

(a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title, the lien of the Insured Mortgage, or any other matter as insured. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

(b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured Claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

7. Options to pay or otherwise settle claims, termination of liability. In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance or to Purchase the Indebtedness.

(i) To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay; or

(ii) To purchase the Indebtedness for the amount of the Indebtedness on the date of purchase, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of purchase and that the Company is obligated to pay. When the Company purchases the Indebtedness, the Insured shall transfer, assign, and convey to the Company the Indebtedness and the Insured Mortgage, together with any collateral security. Upon the exercise by the Company of either of the options provided for in subsections (a)(i) or (ii), all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in those subsections, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

(b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.

(i) to pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or

(ii) to pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

8. Determination and extent of liability. This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

(a) The extent of liability of the Company for loss or damage under this policy shall not exceed the least of

(i) the Amount of Insurance;

(ii) the Indebtedness;

(iii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy; or

(iv) if a government agency or instrumentality is the Insured Claimant, the amount it paid in the acquisition of the Title or the Insured Mortgage in satisfaction of its insurance contract or guaranty.

(b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title or the lien of the Insured Mortgage, as insured,

(i) the Amount of Insurance shall be increased by 10%; and

(ii) the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as of the date it is settled and paid.

(c) In the event the Insured has acquired the Title in the manner described in Section 2 of these Conditions or has conveyed the Title, then the extent of liability of the Company shall continue as set forth in Section 8(a) of these Conditions.

(d) In addition to the extent of liability under (a), (b), and (c), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

9. Limitation of liability.

(a) If the Company establishes the Title, or removes the alleged defect, lien, or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, or establishes the lien of the Insured Mortgage, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title or to the lien of the Insured Mortgage, as insured.

(c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

10. Reduction of insurance; reduction or termination of liability

(a) All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment. However, any payments made prior to the acquisition of Title as provided in Section 2 of these Conditions shall not reduce the Amount of Insurance afforded under this policy except to the extent that the payments reduce the Indebtedness.

(b) The voluntary satisfaction or release of the Insured Mortgage shall terminate all liability of the Company except as provided in Section 2 of these Conditions.

11. Payment of loss. When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.

12. Rights of recovery upon payment or settlement

(a) The Company's Right to Recover

Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Title or Insured Mortgage and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies.

If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.

(b) The Insured's Rights and Limitations

(i) The owner of the Indebtedness may release or substitute the personal liability of any debtor or guarantor, extend or otherwise modify the terms of payment, release a portion of the Title from the lien of the Insured Mortgage, or release any collateral security for the Indebtedness, if it does not affect the enforceability or priority of the lien of the Insured Mortgage.

(ii) If the Insured exercises a right provided in (b)(i), but has Knowledge of any claim adverse to the Title or the lien of the Insured Mortgage insured against by this policy, the Company shall be required to pay only that part of any losses insured against by this policy that shall exceed the amount, if any, lost to the Company by reason of the impairment by the Insured Claimant of the Company's right of subrogation.

(c) The Company's Rights Against Noninsured Obligors

The Company's right of subrogation includes the Insured's rights against non-insured obligors including the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.

The Company's right of subrogation shall not be avoided by acquisition of the Insured Mortgage by an obligor (except an obligor described in Section 1(e)(i)(F) of these Conditions) who acquires the Insured Mortgage as a result of an indemnity, guarantee, other policy of insurance, or bond, and the obligor will not be an Insured under this policy.

13. Arbitration. Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured. All arbitrable matters when the Amount of Insurance is in excess of \$2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

14. Liability limited to this policy; policy entire contract

(a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage that arises out of the status of the Title or lien of the Insured Mortgage or by any action asserting such claim shall be restricted to this policy.

(c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.

(d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

15. Severability. In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

16. Choice of law; forum

(a) Choice of Law: The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located.

Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title or the lien of the Insured Mortgage that are adverse to the Insured and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.

(b) Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

17. Notices, where sent. Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at [fill in].

NOTE: Bracketed [] material optional

[6-16-86, 4-3-95; 13.14.18.15 NMAC - Rn, 13 NMAC 14.7.A.8 through 14.7.A.12, 5-15-00 8-01-08; A, 10-1-12; A, 7-31-14]

13.14.18.16 [~~NM FORM 3 - CONSTRUCTION LOAN POLICY;~~]

[Cover page:

Construction Loan Policy Of Title Insurance

Issued By

Blank Title Insurance Company

[~~NM Form 3; ALTA Form Rev.10-17-92~~]

[SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, BLANK TITLE INSURANCE COMPANY, a Blank corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Unmarketability of the title;
4. Lack of a right of access to and from the land;
5. The invalidity or unenforceability of the lien of the insured mortgage upon the title;
6. The priority of any lien or encumbrance over the lien of the insured mortgage;
7. The invalidity or unenforceability of any assignment of the insured mortgage, provided the assignment is shown in Schedule A, or the failure of the assignment shown in Schedule A to vest title to the insured mortgage in the named insured assignee free and clear of all liens.

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title or the lien of the insured mortgage, as insured, but only to the extent provided in the Conditions and Stipulations:

[Witness clause optional]

Dated: _____

BLANK TITLE INSURANCE COMPANY

By _____, President

By _____, Secretary

Exclusions from coverage:

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses that arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy:

2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge:

3. Defects, liens, encumbrances, adverse claims or other matters:

(a) created, suffered, assumed or agreed to by the insured claimant;

(b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;

(c) resulting in no loss or damage to the insured claimant;

(d) attaching or created subsequent to Date of Policy; or

(e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage:

4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness to comply with applicable doing business laws of the state in which the land is situated:

5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law:

6. Any lien or right to a lien imposed by law for services, labor or material heretofore or hereafter furnished, except for any lien the assertion of which by a claimant is recorded in the public records at Date of Policy:

7. Any lack of priority of the lien of the insured mortgage over any lien or encumbrances because, and to the extent that the proceeds of the loan secured thereby may not have been fully disbursed at Date of Policy:

8. Any claim, which arises out of the transaction creating the interest of the mortgagee insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditor's rights laws that is based on:

(a) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or

(b) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination; or

(c) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:

(i) to timely record the instrument of transfer; or

(ii) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor:

Schedule A:

File No. —

Policy No:

Amount of Insurance \$

{Premium \$ — }

Date of Policy: _____ at {a.m.} [p.m.]

1. Name of Insured:

2. The estate or interest in the land which is encumbered by the insured mortgage is:

3. Title to the estate or interest in the land is vested in:

4. The insured mortgage and assignments thereof, if any, are described as follows:

[5. The land referred to in this policy is described as follows:]

If Paragraph 5 is omitted, a Schedule C, captioned the same as Paragraph 5, must be used.

Schedule B - Exceptions from coverage:

[File No. _____]

Policy No. _____

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of: [Policy may include regional exceptions if so desired by issuing company and variable exceptions such as taxes, easements, CC & Rs, etc.]

Part I

- 1.
- 2.
- 3.
- 4.

Note: If there are matters which affect the title to the estate or interest in the land described in Schedule [A][C], but which are subordinate to the lien of the insured mortgage, Part II of Schedule B must be added, or Part I of Schedule B must contain the following statement:

"Matters which affect the title to the estate or interest, but which are subordinate to the lien of the insured mortgage"

Part II

In addition to the matters set forth in Part I of this Schedule, the title to the estate or interest in the land described or referred to in Schedule [A][C] is subject to the following matters, if any be shown, but the Company insures that these matters are subordinate to the lien or charge of the insured mortgage upon the estate or interest:

Conditions and stipulations:

1. Definition of Terms. The following terms when used in this policy mean:

(a) "insured": the insured named in Schedule A. The term "insured" also includes

(i) the owner of the indebtedness secured by the insured mortgage and each successor in ownership of the indebtedness except a successor who is an obligor under the provisions of Section 12(c) of these Conditions and Stipulations (reserving, however, all rights and defenses as to any successor that the company would have had against any predecessor insured, unless the successor acquired the indebtedness as a purchaser for value without knowledge of the asserted defect, lien, encumbrance, adverse claim or other matter insured against by this policy as affecting title to the estate or interest in the land);

(ii) any governmental agency or governmental instrumentality which is an insurer or guarantor under an insurance contract or guaranty insuring or guaranteeing the indebtedness secured by the insured mortgage, or any part thereof, whether named as an insured herein or not;

(iii) the parties designated in Section 2(a) of these Conditions and Stipulations.

(b) "insured claimant": an insured claiming loss or damage.

(c) "knowledge" or "known": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of the public records as defined in this policy or any other records which impart constructive notice of matters affecting the land.

(d) "land": the land described or referred to in Schedule [A][C], and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule [A][C], nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.

(e) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.

(f) "public records": records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge. With respect to Section 1(a)(iv) of the Exclusions From Coverage, "public records" shall also include environmental protection liens filed in the records of the clerk of the United States district court for the district in which the land is located.

(g) "unmarketability of the title": an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, which would entitle a purchaser of the estate or interest described in Schedule A or the insured mortgage to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title.

2. Continuation of Insurance

(a) After Acquisition of Title. The coverage of this policy shall continue in force as of Date of Policy in favor of (i) an insured who acquires all or any part of the estate or interest in the land by foreclosure, trustee's sale, conveyance in lieu of foreclosure, or other legal manner which discharges the lien of the insured mortgage; (ii) a transferee of the estate or interest so acquired from an insured corporation, provided the transferee is the parent or wholly-owned subsidiary of the insured corporation, and their corporate successors by operation of law and not by purchase, subject to any rights or defenses the Company may have against any predecessor insureds; and (iii) any governmental agency or governmental instrumentality which acquires all or any part of the estate or interest pursuant to a contract of insurance or guaranty insuring or guaranteeing the indebtedness secured by the insured mortgage.

(b) After Conveyance of Title. The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from the insured, or only so long as the insured shall have liability by reason of covenants of warranty made by the insured in any transfer or conveyance of the estate or interest. This policy shall not continue in force in favor of any purchaser from the insured of either (i) an estate or interest in the land, or (ii) an indebtedness secured by a purchase money mortgage given to the insured.

(c) Amount of Insurance. The amount of insurance after the acquisition or after the conveyance shall in neither event exceed the least of:

(i) the Amount of Insurance stated in Schedule A;

(ii) the amount of the principal of the indebtedness secured by the insured mortgage as of Date of Policy, interest thereon, expenses of foreclosure, amounts advanced pursuant to the insured mortgage to assure compliance with laws or to protect the lien of the insured mortgage prior to the time of acquisition of the estate or interest in the land and secured thereby and reasonable amounts expended to prevent deterioration of improvements, but reduced by the amount of all payments made; or

(iii) the amount paid by any governmental agency or governmental instrumentality, if the agency or instrumentality is the insured claimant, in the acquisition of the estate or interest in satisfaction of its insurance contract or guaranty.

3. Notice of Claim to be Given by Insured Claimant. The insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 4(a) below; (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest or the lien of the insured mortgage, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy; or (iii) if title to the estate or interest or the lien of the insured mortgage, as insured, is rejected as unmarketable. If prompt notice shall not be given to the Company, then as to the insured all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

4. Defense and Prosecution of Actions: Duty of Insured Claimant to Cooperate

(a) Upon written request by the insured and subject to the options contained in Section 6 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an insured in litigation in which any third party asserts a claim adverse to the title or interest as insured, but only as to those stated causes of action alleging a defect, lien or encumbrance or other matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the insured to object for reasonable cause) to represent the insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by the insured in the defense of those causes of action which allege matters not insured against by this policy.

(b) The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest or the lien of the insured mortgage, as insured, or to prevent or reduce loss or damage to the insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

(c) Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the insured for this purpose. Whenever requested by the Company, the insured, at the Company's expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest or the lien of the insured mortgage, as insured. If the Company is prejudiced by the failure of the insured to furnish the required cooperation, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

5. Proof of Loss or Damage.

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by the insured claimant shall be furnished to the Company within 90 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the insured claimant to provide the required proof of loss or damage, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation with regard to the matter or matters requiring such proof of loss or damage.

In addition, the insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in this paragraph, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

6. Options to Pay or Otherwise Settle Claims: Termination of Liability. In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance or to Purchase the Indebtedness

(i) to pay or tender payment of the amount of insurance under this policy together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay; or

(ii) to purchase the indebtedness secured by the insured mortgage for the amount owing thereon together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of purchase and which the Company is obligated to pay.

If the Company offers to purchase the indebtedness as herein provided, the owner of the indebtedness shall transfer, assign, and convey the indebtedness and the insured mortgage, together with any collateral security, to the Company upon payment therefor.

Upon the exercise by the Company of either of the options provided for in paragraphs a(i) or (ii), all liability and obligations to the insured under this policy, other than to make the payment required in those paragraphs, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, and the policy shall be surrendered to the Company for cancellation.

(b) To Pay or Otherwise Settle With Parties Other than the Insured or With the Insured Claimant

(i) to pay or otherwise settle with other parties for or in the name of an insured claimant any claim insured against under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay; or

(ii) to pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in paragraphs b(i) or (ii), the Company's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

7. Determination and Extent of Liability. This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described:

(a) The liability of the Company under this policy shall not exceed the least of:

(i) the Amount of Insurance stated in Schedule A, or, if applicable, the amount of insurance as defined in Section 2(c) of these Conditions and Stipulations;

(ii) the amount of the proceeds of the loan secured by the insured mortgage disbursed at Date of Policy plus the amount of each succeeding

disbursement made in accordance with the terms of the insured mortgage until the aggregate of all disbursements is equal to the Amount of Insurance stated in Schedule A, plus any amount advanced to protect the lien of the insured mortgage and secured thereby, plus interest on those amounts, as limited or provided under Section 8 of these Conditions and Stipulations or as reduced under Section 9 of these Conditions and Stipulations; or

(iii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(b) In the event the insured has acquired the estate or interest in the manner described in Section 2(a) of these Conditions and Stipulations or has conveyed the title, then the liability of the Company shall continue as set forth in Section 7(a) of these Conditions and Stipulations:

(c) The Company will pay only those costs, attorneys' fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations:

8. Limitation of Liability

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the land, or cures the claim of unmarketability of title, or otherwise establishes the lien of the insured mortgage, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby:

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title or to the lien of the insured mortgage, as insured:

(c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of the Company:

9. Reduction of Insurance: Reduction or Termination of Liability

(a) All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance *pro tanto*. However, any payments made prior to the acquisition of title to the estate or interest as provided in Section 2(a) of these Conditions and Stipulations shall not reduce *pro tanto* the amount of the insurance afforded under this policy except to the extent that the payments reduce the amount of the indebtedness secured by the insured mortgage:

(b) Payment in part by any person of the principal of the indebtedness, or any obligation secured by the insured mortgage, or any voluntary partial satisfaction or release of the insured mortgage, to the extent of the payment, satisfaction or release, shall reduce the amount of insurance *pro tanto*. The amount of insurance may thereafter be increased by accruing interest and advances made to protect the lien of the insured mortgage and secured thereby, with interest thereon, provided in no event shall the amount of insurance be greater than the Amount of Insurance stated in Schedule A:

(c) Payment in full by any person or the voluntary satisfaction or release of the insured mortgage shall terminate all liability of the Company except as provided in Section 2(a) of these Conditions and Stipulations:

10. Liability Non-cumulative. If the insured acquires title to the estate or interest in satisfaction of the indebtedness secured by the insured mortgage, or any part thereof, it is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed, assumed, or taken subject, or which is hereafter executed by an insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy:

11. Payment of Loss

(a) No payment shall be made without producing this policy for endorsement of the payment unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company:

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter:

12. Subrogation Upon Payment or Settlement

(a) The Company's Right of Subrogation

Whenever the Company shall have settled and paid a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant:

The Company shall be subrogated to and be entitled to all rights and remedies which the insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer

to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit the Company to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the insured claimant, the Company shall be subrogated to all rights and remedies of the insured claimant after the insured claimant shall have recovered its principal, interest, and costs of collection.

(b) The Insured's Rights and Limitations

Notwithstanding the foregoing, the owner of the indebtedness secured by the insured mortgage, provided the priority of the lien of the insured mortgage or its enforceability is not affected, may release or substitute the personal liability of any debtor or guarantor, or extend or otherwise modify the terms of payment, or release a portion of the estate or interest from the lien of the insured mortgage, or release any collateral security for the indebtedness.

When the permitted acts of the insured claimant occur and the insured has knowledge of any claim of title or interest adverse to the title to the estate or interest or the priority or enforceability of the lien of the insured mortgage, as insured, the Company shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

(c) The Company's Rights Against Non-insured Obligors

The Company's right of subrogation against non-insured obligors shall exist and shall include, without limitation, the rights of the insured to indemnities, guaranties, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments which provide for subrogation rights by reason of this policy.

The Company's right of subrogation shall not be avoided by acquisition of the insured mortgage by an obligor (except an obligor described in Section 1(a)(ii) of these Conditions and Stipulations) who acquires the insured mortgage as a result of an indemnity, guarantee, other policy of insurance, or bond and the obligor will not be an insured under this policy, notwithstanding Section 1(a)(i) of these Conditions and Stipulations.

13. Arbitration:

Unless prohibited by applicable law, either the Company or the insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters when the Amount of Insurance is \$1,000,000 or less shall be arbitrated at the option of either the Company or the insured. All arbitrable matters when the Amount of Insurance is in excess of \$1,000,000 shall be arbitrated only when agreed to by both the Company and the insured. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the company upon request.

14. Liability Limited to this Policy: Policy Entire Contract

(a) This policy together with all endorsements, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the lien of the insured mortgage or of the title to the estate or interest covered hereby or by any action asserting such claim, shall be restricted to this policy.

(c) No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

15. Severability. In the event any provision of this policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision and all other provisions shall remain in full force and effect.

16. Notices, Where Sent. All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company at (fill in):

NOTE: Bracketed [—] material optional] [Reserved]

[6-16-86, 4-3-95; 13.14.18.16 NMAC - Rn, 13 NMAC 14.7.B.8 through 14.7.B.12, 5-15-00; A, 7-31-14]

13.14.18.36 NM FORM 20: LEASEHOLD OWNER'S ENDORSEMENT:

Leasehold Owner's Endorsement

Attached to Policy No. _____

Issued by

Blank Title Insurance Company

[NM Form 20; ALTA Form 13, ~~[Rev. 2006]~~ Rev. 04-02-12]

[1. As used in this endorsement, these terms shall mean the following:

a. "Evicted" or "Eviction": (a) the lawful deprivation, in whole or in part, of the right of possession insured by this policy, contrary to the terms of the Lease or (b) the lawful prevention of the use of the Land or the Tenant Leasehold Improvements for the purposes permitted by the Lease, in either case as a result of a matter covered by this policy.

b. "Lease": the lease agreement described in Schedule A.

c. "Leasehold Estate": the right of possession for the Lease Term.

d. "Lease Term": the duration of the Leasehold Estate, including any renewal or extended term if a valid option to renew or extend is contained in the Lease.

e. "Personal Property": chattels located on the Land and property which, because of their character and manner of affixation to the Land, can be severed from the Land without causing appreciable damage to themselves or to the Land to which they are affixed.

f. "Remaining Lease Term": the portion of the Lease Term remaining after the Insured has been Evicted as a result of a matter covered by this policy.

g. "Tenant Leasehold Improvements": Those improvements, including landscaping, required or permitted to be built on the Land by the Lease that have been built at the Insured's expense or in which the Insured has an interest greater than the right to possession during the Lease Term.

2. Valuation of Estate or Interest Insured.

If in computing loss or damage it becomes necessary to value the Title as the result of a covered matter that results in an Eviction of the Tenant, then that value shall consist of the value for the Remaining Lease Term of the Leasehold Estate and any Tenant Leasehold Improvements existing on the date of the Eviction. The Insured Claimant shall have the right to have the Leasehold Estate and the Tenant Leasehold Improvements valued either as a whole or separately. In either event, this determination of value shall take into account rent no longer required to be paid for the Remaining Lease Term.

3. Additional items of loss covered by this endorsement.

If the Insured is Evicted, the following items of loss, if applicable, shall be included in computing loss or damage incurred by the Insured, but not to the extent that the same are included in the valuation of the Title:

a. The reasonable cost of removing and relocating any Personal Property that the Insured has the right to remove and relocate, situated on the Land at the time of Eviction, the cost of transportation of that Personal Property for the initial one hundred miles incurred in connection with the relocation, and the reasonable cost of repairing the Personal Property damaged by reason of the removal and relocation.

b. Rent or damages for use and occupancy of the Land prior to the Eviction that the Insured as owner of the Leasehold Estate may be obligated to pay to any person having paramount title to that of the lessor in the Lease.

c. The amount of rent that, by the terms of the Lease, the Insured must continue to pay to the lessor after Eviction with respect to the portion of the Leasehold Estate and Tenant Leasehold Improvements from which the Insured has been Evicted.

d. The fair market value, at the time of the Eviction, of the estate or interest of the Insured in any lease or sublease made by Tenant as lessor of all or part of the Leasehold Estate or the Tenant Leasehold Improvements.

e. Damages that the Insured is obligated to pay to lessees or sublessees on account of the breach of any lease or sublease made by the Tenant as lessor of all or part of the Leasehold Estate or the Tenant Leasehold Improvements caused by the Eviction.

f. Reasonable costs incurred by the Insured to secure a replacement leasehold equivalent to the Leasehold Estate.

g. If Tenant Leasehold Improvements are not substantially completed at the time of Eviction, the actual cost incurred by the Insured, less the salvage value, for the Tenant Leasehold Improvements up to the time of Eviction. Those costs include costs incurred to obtain land use, zoning, building and occupancy permits, architectural and engineering fees, construction management fees, costs of environmental testing and reviews, and landscaping costs.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements to it.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

Authorized signatory _____]

American Land Title Association Endorsement 13-06 (Leasehold – Owner’s) Revised 04-02-12

1. As used in this endorsement, the following terms shall mean:

a. “Evicted” or “Eviction” is (a) the lawful deprivation, in whole or in part, of the right of possession insured by this policy, contrary to the terms of the lease; or (b) the lawful prevention of the use of the land or the tenant leasehold improvements for the purposes permitted by the lease, in either case as a result of a matter covered by this policy.

b. “Lease” is the lease described in Schedule A.

c. “Leasehold Estate” is the right of possession granted in the lease for the lease term.

d. “Lease Term” is the duration of the leasehold estate, as set forth in the lease, including any renewal or extended term if a valid option to renew or extend is contained in the lease.

e. “Personal Property” is property, in which and to the extent the insured has rights, located on or affixed to the land on or after date of policy that by law does not constitute real property because: (i) of its character and manner of attachment to the land; and (ii) the property can be severed from the land without causing material damage to the property or to the land.

f. “Remaining Lease Term” is the portion of the lease term remaining after the insured has been evicted.

g. “Tenant Leasehold Improvements” are those improvements, in which and to the extent the insured has rights, including landscaping, required or permitted to be built on the land by the lease that have been built at the insured’s expense or in which the insured has an interest greater than the right to possession during the lease term.

2. Valuation of Estate or Interest Insured:

If in computing loss or damage it becomes necessary to value the title, or any portion of it, as the result of an eviction of the insured, then, as to that portion of the land from which the insured is evicted, that value shall consist of the value for the remaining lease term of the leasehold estate and any tenant leasehold improvements existing on the date of the eviction. The insured claimant shall have the right to have the leasehold estate and the tenant leasehold improvements affected by a defect insured against by the policy valued either as a whole or separately. In either event, this determination of value shall take into account rent no longer required to be paid for the remaining lease term.

3. Additional items of loss covered by this endorsement:

If the insured is evicted, the following items of loss, if applicable to that portion of the land from which the insured is evicted shall be included, without duplication, in computing loss or damage incurred by the insured, but not to the extent that the same are included in the valuation of the title determined pursuant to Section 2 of this endorsement, any other endorsement to the policy, or Section 8(a)(ii) of the conditions:

a. the reasonable cost of: (i) removing and relocating any personal property that the insured has the right to remove and relocate, situated on the land at the time of eviction; (ii) transportation of that personal property for the initial one hundred miles incurred in connection with the relocation; (iii) repairing the personal property damaged by reason of the removal and relocation; and (iv) restoring the land to the extent damaged as a result of the removal and relocation of the personal property and required of the insured solely because of the eviction;

b. rent or damages for use and occupancy of the land prior to the Eviction that the insured as owner of the leasehold estate may be obligated to pay to any person having paramount title to that of the lessor in the lease;

c. the amount of rent that, by the terms of the lease, the insured must continue to pay to the lessor after eviction with respect to the portion of the leasehold estate and tenant leasehold improvements from which the insured has been evicted;

d. the fair market value, at the time of the eviction, of the estate or interest of the insured in any lease or sublease permitted by the lease and made by the insured as lessor of all or part of the leasehold estate or the tenant leasehold improvements;

e. damages caused by the eviction that the insured is obligated to pay to lessees or sublessees on account of the breach of any lease or sublease permitted by the lease and made by the insured as lessor of all or part of the leasehold estate or the tenant leasehold improvements;

f. the reasonable cost to obtain land use, zoning, building and occupancy permits, architectural and engineering services and environmental testing and reviews for a replacement leasehold reasonably equivalent to the leasehold estate, and

g. if tenant leasehold improvements are not substantially completed at the time of eviction, the actual cost incurred by the insured, less the salvage value, for the tenant leasehold improvements up to the time of eviction. Those costs include costs incurred to obtain land use, zoning, building and occupancy permits, architectural and engineering services, construction management services, environmental testing and reviews, and landscaping.

4. This endorsement does not insure against loss, damage or costs of remediation (and the Company will not pay costs, attorneys' fees or expenses) resulting from environmental damage or contamination.

This endorsement is issued as part of the policy. Except as it expressly states, it does not: (i) modify any of the terms and provisions of the policy; (ii) modify any prior endorsements; (iii) extend the date of policy; or (iv) increase the amount of insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____

Authorized Signatory

[6-16-86; 13.14.18.36 NMAC - Rn, 13 NMAC 14.8.A.20, 5-15-00; 13.14.18.36 NMAC - Rn, 13.14.18.33 NMAC, & A, 8-1-08; A, 7-31-14]

13.14.18.37 NM FORM 21: LEASEHOLD LOAN ENDORSEMENT:

Leasehold Loan Endorsement

Attached to Policy No. _____

Issued By

Blank Title Insurance Company

[NM Form 21; ALTA Form 13.1, ~~Rev. 2006~~ Rev. 04-02-12]

[1. As used in this endorsement, these terms shall mean the following:

a. "Evicted" or "Eviction": (a) the lawful deprivation, in whole or in part, of the right of possession insured by this policy, contrary to the terms of the Lease or (b) the lawful prevention of the use of the Land or the Tenant Leasehold Improvements for the purposes permitted by the Lease, in either case, as a result of a matter covered by this policy.

b. "Lease": the lease agreement described in Schedule A.

c. "Leasehold Estate": the right of possession for the Lease Term.

d. "Lease Term": the duration of the Leasehold Estate, including any renewal or extended term if a valid option to renew or extend is contained in the Lease.

e. "Personal Property": chattels located on the Land and property that, because of their character and manner of affixation to the Land, can be severed from the Land without causing appreciable damage to themselves or to the Land to which they are affixed.

f. "Remaining Lease Term": the portion of the Lease Term remaining after the Insured has been Evicted as a result of a matter covered by this policy.

g. "Tenant": the tenant under the Lease and, after acquisition of all or any part of the Title in accordance with the provisions of Section 2 of the Conditions of this policy, the Insured Claimant.

h. "Tenant Leasehold Improvements": Those improvements, including landscaping, required or permitted to be built on the Land by the Lease that have been built at the Insured's expense or in which the Insured has an interest greater than the right to possession during the Lease Term.

~~2. Valuation of Estate or Interest Insured.~~

If in computing loss or damage it becomes necessary to value the Title as the result of a covered matter that results in an Eviction of the Tenant, then that value shall consist of the value for the Remaining Lease Term of the Leasehold Estate and any Tenant Leasehold Improvements existing on the date of the Eviction. The Insured Claimant shall have the right to have the Leasehold Estate and the Tenant Leasehold Improvements valued either as a whole or separately. In either event, this determination of value shall take into account rent no longer required to be paid for the Remaining Lease Term.

3. ~~Additional items of loss covered by this endorsement:~~

If the Insured acquires all or any part of the Title in accordance with the provisions of Section 2 of the Conditions of this policy and thereafter is Evicted, the following items of loss, if applicable, shall be included in computing loss or damage incurred by the Insured, but not to the extent that the same are included in the valuation of the Title:

- a. ~~The reasonable cost of removing and relocating any Personal Property that the Insured has the right to remove and relocate, situated on the Land at the time of Eviction the cost of transportation of that Personal Property for the initial one hundred miles incurred in connection with the relocation, and the reasonable cost of repairing the Personal Property damaged by reason of the removal and relocation.~~
- b. ~~Rent or damages for use and occupancy of the Land prior to the Eviction that the Insured as owner of the Leasehold Estate may be obligated to pay to any person having paramount title to that of the lessor in the Lease.~~
- e. ~~The amount of rent that, by the terms of the Lease, the Insured must continue to pay to the lessor after Eviction with respect to the portion of the Leasehold Estate and Tenant Leasehold Improvements from which the Insured has been Evicted.~~
- d. ~~The fair market value, at the time of the Eviction, of the estate or interest of the Insured in any lease or sublease made by Tenant as lessor of all or part of the Leasehold Estate or the Tenant Leasehold Improvements.~~
- e. ~~Damages that the Insured is obligated to pay to lessees or sublessees on account of the breach of any lease or sublease made by the Tenant as lessor of all or part of the Leasehold Estate or the Tenant Leasehold Improvements caused by the Eviction.~~
- f. ~~Reasonable costs incurred by the Insured to secure a replacement leasehold equivalent to the Leasehold Estate.~~
- g. ~~If Tenant Leasehold Improvements are not substantially completed at the time of Eviction, the actual cost incurred by the Insured, less the salvage value, for the Tenant Leasehold Improvements up to the time of Eviction. Those costs include costs incurred to obtain land use, zoning, building and occupancy permits, architectural and engineering fees, construction management fees, costs of environmental testing and reviews, and landscaping costs.~~

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements to it.

{Witness clause optional}

BLANK TITLE INSURANCE COMPANY

Authorized signatory _____]

American Land Title Association Endorsement 13.1-06 (Leasehold – Loan) Revised 04-02-12

1. As used in this endorsement, the following terms shall mean:

- a. “Evicted” or “Eviction” is (a) the lawful deprivation, in whole or in part, of the right of possession insured by this policy, contrary to the terms of the lease; or (b) the lawful prevention of the use of the land or the tenant leasehold improvements for the purposes permitted by the lease, in either case as a result of a matter covered by this policy.
- b. “Lease” is the lease described in Schedule A.
- c. “Leasehold Estate” is the right of possession granted in the lease for the lease term.
- d. “Lease Term” is the duration of the leasehold estate, as set forth in the lease, including any renewal or extended term if a valid option to renew or extend is contained in the lease.
- e. “Personal Property” is property, in which and to the extent the insured has rights, located on or affixed to the land on or after date of policy that by law does not constitute real property because: (i) of its character and manner of attachment to the land; and (ii) the property can be severed from the land without causing material damage to the property or to the land.
- f. “Remaining Lease Term” is the portion of the lease term remaining after the tenant has been evicted.
- g. “Tenant” is the tenant under the lease and, after acquisition of all or any part of the title in accordance with the provisions of Section 2 of the conditions of the policy, the Insured Claimant.
- h. “Tenant Leasehold Improvements” are those improvements, in which and to the extent the insured has rights, including landscaping, required or permitted to be built on the land by the lease that have been built at the tenant’s expense or in which the tenant has an interest greater than the right to possession during the lease term.

2. Valuation of Estate or Interest Insured:

If in computing loss or damage it becomes necessary to value the title, or any portion of it, as the result of an eviction of the tenant, then, as to that portion of the land from which the tenant is evicted, that value shall consist of the value for the remaining lease term of the leasehold estate and any tenant leasehold improvements existing on the date of the eviction. The insured claimant shall have the right to have the leasehold estate and the tenant leasehold improvements affected by a defect insured against by the policy valued either as a whole or separately. In either event, this determination of value shall take into account rent no longer required to be paid for the remaining lease term.

3. Additional items of loss covered by this endorsement:

If the insured acquires all or any part of the title in accordance with the provisions of Section 2 of the conditions of this policy and thereafter is evicted, the following items of loss, if applicable to that portion of the land from which the insured is evicted shall be included, without duplication, in computing loss or damage incurred by the insured, but not to the extent that the same are included in the valuation of the title determined pursuant to Section 2 of this endorsement, any other endorsement to the policy, or Section 8(a)(iii) of the conditions:

a. the reasonable cost of: (i) removing and relocating any personal property that the insured has the right to remove and relocate, situated on the land at the time of eviction; (ii) transportation of that personal property for the initial one hundred miles incurred in connection with the relocation; (iii) repairing the personal property damaged by reason of the removal and relocation; and (iv) restoring the land to the extent damaged as a result of the removal and relocation of the personal property and required of the insured solely because of the eviction;

b. rent or damages for use and occupancy of the land prior to the Eviction that the insured as owner of the leasehold estate may be obligated to pay to any person having paramount title to that of the lessor in the lease;

c. the amount of rent that, by the terms of the lease, the insured must continue to pay to the lessor after eviction with respect to the portion of the leasehold estate and tenant leasehold improvements from which the insured has been evicted;

d. the fair market value, at the time of the eviction, of the estate or interest of the insured in any lease or sublease permitted by the lease and made by the tenant as lessor of all or part of the leasehold estate or the tenant leasehold improvements;

e. damages caused by the eviction that the insured is obligated to pay to lessees or sublessees on account of the breach of any lease or sublease permitted by the lease and made by the tenant as lessor of all or part of the leasehold estate or the tenant leasehold improvements;

f. the reasonable cost to obtain land use, zoning, building and occupancy permits, architectural and engineering services and environmental testing and reviews for a replacement leasehold reasonably equivalent to the leasehold estate, and

g. if tenant leasehold improvements are not substantially completed at the time of eviction, the actual cost incurred by the insured, less the salvage value, for the tenant leasehold improvements up to the time of eviction. Those costs include costs incurred to obtain land use, zoning, building and occupancy permits, architectural and engineering services, construction management services, environmental testing and reviews, and landscaping.

4. This endorsement does not insure against loss, damage or costs of remediation (and the Company will not pay costs, attorneys' fees or expenses) resulting from environmental damage or contamination.

This endorsement is issued as part of the policy. Except as it expressly states, it does not: (i) modify any of the terms and provisions of the policy; (ii) modify any prior endorsements; (iii) extend the date of policy; or (iv) increase the amount of insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____

Authorized Signatory

[6-16-86...4-1-94; 13.14.18.37 NMAC - Rn, 13 NMAC 14.8.A.21, 5-15-00; 13.14.18.37 NMAC - Rn, 13.14.18.34 NMAC & A, 8-1-08; A, 7-31-14]

13.14.18.53 ~~[NM FORM 34 - U.S. POLICY, ALTA 1991:]~~ **NM FORM 34 - U.S. POLICY FORM, ALTA 19-28-91, REV. 12-03-12:**

[Cover page:

United States Of America Policy Of Title Insurance

Issued By

Blank Title Insurance Company

[NM Form 34, ALTA U.S. Policy Form Rev. 9-28-91]

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, BLANK TITLE INSURANCE COMPANY, a Blank corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. title to the estate or interest described in Schedule A being vested other than as stated therein;
2. any defect in or lien or encumbrance on the title;
3. unmarketability of the title;
4. lack of a right of access to and from the land;
5. in instances where the insured acquires title to the land by condemnation, failure of the commitment for title insurance, as updated to the date of the filing of the *lis pendens* notice or the Declaration of Taking, to disclose the parties having an interest in the land as disclosed by the public records.

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title, as insured, but only to the extent provided in the Conditions and Stipulations.

[Witness clause optional]

Dated: _____

BLANK TITLE INSURANCE COMPANY

By: _____, President

By: _____, Secretary

Exclusions from coverage:

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
 - (a) created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
 - (c) resulting in no loss or damage to the insured claimant; or
 - (d) attaching or created subsequent to Date of Policy.
4. This policy does not insure against the invalidity or insufficiency of any condemnation proceeding instituted by the United States of America, except to the extent set forth in insuring provision 5.

Schedule A:

[File No.] Policy No:

Amount of Insurance \$

[Premium \$]

Date of Policy: _____ at [a.m.] [p.m.]

1. Name of Insured:

2. The estate or interest in the land which is covered by this policy is:

3. Title to the estate or interest in the land is vested in:

[4. The land referred to in this policy is described as follows:]

If Paragraph 4 is omitted, a Schedule C, captioned the same as Paragraph 4, must be used.

Schedule B - Exceptions from coverage:

[File No.]

Policy No:

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of: [Policy may include regional exceptions if so desired by issuing company and variable exceptions such as taxes, easements, CC & Rs, etc.]

1.

2.

3.

4.

Conditions and stipulations:

1. Definition of Terms. The following terms when used in this policy mean:

(a) "insured": the insured named in Schedule A, and, subject to any rights or defenses the Company would have had against the named insured, those who succeed to the interest of the named insured by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate or fiduciary successors.

(b) "insured claimant": an insured claiming loss or damage.

(c) "knowledge" or "known": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of public records as defined in this policy or any other records which impart constructive notice of matters affecting the land.

(d) "land": the land described or referred to in Schedule [A][C], and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule [A][C], nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.

(e) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.

(f) "public records": records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge. With respect to Section 1(a)(iv) of the Exclusions From Coverage, "public records" shall also include environmental protection liens filed in the records of the clerk of the United States district court for the district in which the land is located.

(g) "unmarketability of the title": an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, which would entitle a purchaser of the estate or interest described in Schedule A to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title.

2. Continuation of Insurance After Conveyance of Title. The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from the insured, or only so long as the insured shall have liability by reason of covenants of warranty made by the insured in any transfer or conveyance of the estate or interest. This policy shall not continue in force in favor of any purchaser from the insured of either (i) an estate or interest in the land, or (ii) an indebtedness secured by a purchase money mortgage given to the insured.

3. Notice of Claim to be Given by Insured Claimant. The insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 4(a) below; (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy; or (iii) if title to the estate or interest, as insured, is rejected as unmarketable. If prompt notice shall not be given to the Company, then as to the insured all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

4. Defense and Prosecution of Actions: Duty of Insured Claimant to Cooperate

(a) Upon written request by the insured and subject to the options contained in Section 6 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an insured in litigation in which any third party asserts a claim adverse to the title or interest as insured, but only as to those stated causes of action alleging a defect, lien or encumbrance or other matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the insured to object for reasonable cause) to represent the insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by the insured in the defense of those causes of action which allege matters not insured against by this policy.

(b) The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest, as insured, or to prevent or reduce loss or damage to the insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

(c) Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the insured for this purpose. Whenever requested by the Company, the insured, at the Company's expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest as insured. If the Company is prejudiced by the failure of the insured to furnish the required cooperation, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

(e) Notwithstanding Conditions and Stipulations Section 4(a-d), the Attorney General of the United States shall have the sole right to authorize or to undertake the defense of any matter which would constitute a claim under the policy, and the Company may not represent the insured without authorization. If the Attorney General elects to defend at the Government's expense, the Company shall, upon request, cooperate and render all reasonable assistance in the prosecution or defense of the proceeding and in prosecuting any related appeals. If the Attorney General shall fail to authorize and permit the Company to defend, all liability of the Company with respect to that claim shall terminate; provided, however, that if the Attorney General shall give the Company timely notice of all proceedings and an opportunity to suggest defenses and actions as it shall recommend should be taken, and the Attorney General shall present the defenses and take the actions of which the Company shall continue and, in any event, the Company shall cooperate and render all reasonable assistance in the prosecution or defense of the claim and any related appeals.

5. Proof of Loss or Damage

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by the insured claimant shall be furnished to the Company within 90 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the insured claimant to provide the required proof of loss or damage, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

In addition, the insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the insured claimant to submit for examination under oath, produce other reasonably requested information or grant

permission to secure reasonably necessary information from third parties as required in this paragraph shall terminate any liability of the Company under this policy as to that claim.

~~6. Options to Pay or Otherwise Settle Claims: Termination of Liability. In case of a claim under this policy, the Company shall have the following additional options:~~

~~(a) To Pay or Tender Payment of the Amount of Insurance:~~

~~To pay or tender payment of the amount of insurance under this policy together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay:~~

~~Upon the exercise by the Company of this option, all liability and obligations to the insured under this policy, other than to make the payment required, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, and the policy shall be surrendered to the Company for cancellation.~~

~~(b) To Pay or Otherwise Settle With Parties Other than the Insured or With the Insured Claimant.~~

~~(i) Subject to the prior written approval of the Attorney General, to pay or otherwise settle with other parties for or in the name of an insured claimant any claim insured against under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay; or~~

~~(ii) to pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.~~

~~Upon the exercise by the Company of either of the options provided for in paragraphs (b)(i) or (ii), the Company's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation. Failure of the Attorney General to give the approval called for in (b)(i) shall not prejudice the rights of the insured unless the Company is prejudiced thereby, and then only to the extent of the prejudice.~~

~~7. Determination and Extent of Liability. This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described:~~

~~(a) The liability of the Company under this policy shall not exceed the least of:~~

~~(i) the Amount of Insurance stated in Schedule A; or,~~

~~(ii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.~~

~~(b) The Company will pay only those costs, attorneys' fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations:~~

~~8. Apportionment. If the land described in Schedule [A][C] consists of two or more parcels which are not used as a single site, and a loss is established affecting one or more of the parcels but not all, the loss shall be computed and settled on a pro rata basis as if the amount of insurance under this policy was divided pro rata as to the value on Date of Policy of each separate parcel to the whole, exclusive of any improvements made subsequent to Date of Policy, unless a liability or value has otherwise been agreed upon as to each parcel by the Company and the insured at the time of the issuance of this policy and shown by an express statement or by an endorsement attached to this policy.~~

~~9. Limitation of Liability~~

~~(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the land, or cures the claim of unmarketability of title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.~~

~~(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title as insured.~~

~~(c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of the Company.~~

~~10. Reduction of Insurance: Reduction or Termination of Liability. All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance *pro tanto*.~~

11. Liability Noncumulative. It is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed, assumed, or taken subject, or which is hereafter executed by an insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy to the insured owner.

12. Payment of Loss

(a) No payment shall be made without producing this policy or an accurate facsimile for endorsement of the payment unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter.

13. Subrogation upon Payment or Settlement

(a) The Company's Right of Subrogation:

Whenever the Company shall have settled and paid a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit the Company to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the insured claimant, the Company shall be subrogated to these rights and remedies in the proportion which the Company's payment bears to the whole amount of the loss.

If loss should result from any act of the insured claimant, as stated above, that act shall not void this policy, but the Company, in that event, shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

(b) The Company's Rights Against Non-insured Obligors:

The Company's right of subrogation against non-insured obligors shall exist and shall include, without limitation, the rights of the insured to indemnities, guaranties, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments which provide for subrogation rights by reason of this policy.

(c) No Subrogation to the Rights of the United States:

Notwithstanding the provisions of Conditions and Stipulations Section 13(a) and (b), whenever the Company shall have settled and paid a claim under this policy, the Company shall not be subrogated to the rights of the United States. The Attorney General may elect to pursue any additional remedies which may exist, and the Company may be consulted. If the Company agrees in writing to reimburse the United States for all costs, attorneys' fees and expenses, to the extent that funds are recovered they shall be applied first to reimbursing the Company for the amount paid to satisfy the claim, and then to the United States.

14. Arbitration Only by Agreement

Arbitrate matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitratable matters shall be arbitrated only when agreed to by both the Company and the insured.

The law of the United States, or if there be no applicable federal law, the law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

15. Liability Limited to This Policy: Policy Entire Contract

(a) This policy together with all endorsements, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the title to the estate or interest covered hereby or by any action asserting such claim, shall be restricted to this policy.

(c) No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either

the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company:

16. Severability. In the event any provision of the policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision and all other provisions shall remain in full force and effect.

17. Notices, Where Sent. All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company at (fill in):

NOTE: Bracketed [] material optional]

UNITED STATES OF AMERICA
POLICY OF TITLE INSURANCE [ALTA 12-03-12]
Issued by
BLANK TITLE INSURANCE COMPANY

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, BLANK TITLE INSURANCE COMPANY, a Blank corporation herein called the Company insures as of date of policy shown in Schedule A against loss or damage not exceeding the amount of insurance stated in Schedule A, sustained or incurred by the insured by reason of:

- 1. _____ title to the estate or interest described in Schedule A being vested other than as stated therein;
- 2. _____ any defect in or lien or encumbrance on the title;
- 3. _____ unmarketability of the title;
- 4. _____ lack of a right of access to and from the land;
- 5. _____ in instances where the insured acquires title to the land by condemnation, failure of the commitment for title insurance, as updated to the date of the filing of the *lis pendens* notice or the declaration of taking, to disclose the parties having an interest in the land as disclosed by the public records;
- 6. _____ title to the estate or interest described in Schedule A being vested other than as stated therein or being defective:
 - _____ (a) _____ as a result of the avoidance in whole or in part, or from a court order providing an alternative remedy, of a transfer of all or any part of the title to or any interest in the land occurring prior to the transaction vesting title as shown in Schedule A, because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency or similar creditors' rights laws; or
 - _____ (b) _____ because the instrument of transfer vesting title as shown in Schedule A constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the public records:
 - _____ (i) _____ to be timely, or
 - _____ (ii) _____ to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title, as insured, but only to the extent provided in the Conditions and Stipulations.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

BY: _____ PRESIDENT

BY: _____ SECRETARY

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

- 1. _____ (a) _____ any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to: (i) the occupancy, use or enjoyment of the land; (ii) the character, dimensions

or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy;

_____ (b) _____ any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy;

2. _____ rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge;

3. _____ defects, liens, encumbrances, adverse claims or other matters:

_____ (a) created, suffered, assumed or agreed to by the insured claimant;

_____ (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under the policy;

_____ (c) resulting in no loss or damage to the insured claimant; or

_____ (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under insuring provision 6);

4. _____ this policy does not insure against the invalidity or insufficiency of any condemnation proceeding instituted by the United States of America, except to the extent set forth in insuring provision 5;

5. _____ any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the title as shown in Schedule A is:

_____ (a) a fraudulent conveyance or fraudulent transfer; or

_____ (b) a preferential transfer for any reason not stated in insuring provision 6.

SCHEDULE A

Name and address of title insurance Company:

_____ [File No.] _____ Policy No.

Amount of Insurance \$

[Premium \$]

Date of Policy _____ [at a.m./p.m.] _____

1. _____ Name of insured:

2. _____ The estate or interest in the land which is covered by this policy is:

3. _____ Title to the estate or interest in the land is vested in:

4. _____ The land referred to in this policy is described as follows:

If paragraph 4 is omitted, a Schedule C captioned the same as paragraph 4 must be used.

SCHEDULE B

_____ [File No.] _____ Policy No.

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

[POLICY MAY INCLUDE REGIONAL EXCEPTIONS IF SO DESIRED BY ISSUING COMPANY]

[VARIABLE EXCEPTIONS SUCH AS TAXES, EASEMENTS, CC & Rs, ETC.]

CONDITIONS AND STIPULATIONS

1. DEFINITION OF TERMS:

The following terms when used in this policy mean:

- a. “Insured” means the insured named in Schedule A, and, subject to any rights or defenses the Company would have had against the named insured, those who succeed to the interest of the named insured by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate or fiduciary successors.
- b. “Insured claimant” means an insured claiming loss or damage.
- c. “Knowledge” or “known” means actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of the public records as defined in this policy or any other records which impart constructive notice of matters affecting the land.
- d. “Land” means the land described or referred to in Schedule [A][C], and improvements affixed thereto which by law constitute real property. The term “land” does not include any property beyond the lines of the area described or referred to in Schedule [A][C], nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.
- e. “Mortgage” means mortgage, deed of trust, trust deed or other security instrument.
- f. “Public records” means records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge. With respect to Section 1(a)(iv) of the exclusions from coverage, “public records” shall also include environmental protection liens filed in the records of the Clerk of the United States District Court for the district in which the land is located.
- g. “Unmarketability of the title” means an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, which would entitle a purchaser of the estate or interest described in Schedule A to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE AFTER CONVEYANCE OF TITLE:

The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from the insured, or only so long as the insured shall have liability by reason of covenants of warranty made by the insured in any transfer or conveyance of the estate or interest. This policy shall not continue in force in favor of any purchaser from the insured of either: (i) an estate or interest in the land; or (ii) an indebtedness secured by a purchase money mortgage given to the insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT:

The insured shall notify the Company promptly in writing: (i) in case of any litigation as set forth in Section 4(a) below; (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy; or (iii) if title to the estate or interest, as insured, is rejected as unmarketable. If prompt notice shall not be given to the Company, then as to the insured all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

4. DEFENSE AND PROSECUTION OF ACTIONS; DUTY OF INSURED CLAIMANT TO COOPERATE:

(a) Upon written request by the insured and subject to the options contained in Section 6 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an insured in litigation in which any third party asserts a claim adverse to the title or interest as insured, but only as to those stated causes of action alleging a defect, lien or encumbrance or other matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the insured to object for reasonable cause) to represent the insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by the insured in the defense of those causes of action which allege matters not insured by this policy.

(b) The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest, as insured, or to prevent or reduce loss or damage to the insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If the Company shall exercise its rights under this paragraph, it

shall do so diligently.

(c) Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding and all appeals therein and permit the Company to use, at its option, the name of the insured for this purpose. Whenever requested by the Company, the insured, at the Company's expense, shall give the Company all reasonable aid: (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement; and (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest as insured. If the Company is prejudiced by the failure of the insured to furnish the required cooperation, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

(e) Notwithstanding Conditions and Stipulations of Section 4(a-d), the Attorney General of the United States shall have the sole right to authorize or to undertake the defense of any matter which would constitute a claim under the policy, and the Company may not represent the insured without authorization. If the Attorney General elects to defend at the government's expense, the Company shall, upon request, cooperate and render all reasonable assistance in the prosecution or defense of the proceeding and in prosecuting any related appeals. If the Attorney General shall fail to authorize and permit the Company to defend, all liability of the Company with respect to that claim shall terminate; provided, however, that if the Attorney General shall give the Company timely notice of all proceedings and an opportunity to suggest defenses and actions as it shall recommend should be taken, and the Attorney General shall present the defenses and take the actions of which the Company shall advise the Attorney General in writing, the liability of the Company shall continue and, in any event, the Company shall cooperate and render all reasonable assistance in the prosecution or defense of the claim and any related appeals.

5. PROOF OF LOSS OR DAMAGE:

(a) In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by the insured claimant shall be furnished to the Company within 90 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the insured claimant to provide the required proof of loss or damage, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

(b) In addition, the insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the insured claimant provided to the Company pursuant to this section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Unless prohibited by law or governmental regulation, failure of the insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in this paragraph shall terminate any liability of the Company under this policy as to that claim.

6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY:

In case of a claim under this policy, the Company shall have the following additional options:

(a) To pay or tender payment of the amount of insurance.

To pay or tender payment of the amount of insurance under this policy together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay.

Upon the exercise by the Company of this option, all liability and obligations to the insured under this policy, other than to make the payment required, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, and the policy shall be surrendered to the Company for cancellation; and

(b) To pay or otherwise settle with parties other than the insured or with the insured claimant:

(i) subject to the prior written approval of the Attorney General, to pay or otherwise settle with other parties for or in the name of an insured claimant any claim insured against under this policy, together with any costs, attorneys' fees and expenses incurred by the

insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay; or

(ii) to pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in paragraphs 6(b)(i) or (ii), the Company's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation. Failure of the Attorney General to give the approval called for in 6(b)(i) shall not prejudice the rights of the insured unless the Company is prejudiced thereby, and then only to the extent of the prejudice.

7. DETERMINATION AND EXTENT OF LIABILITY:

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a) The liability of the Company under this policy shall not exceed the least of:

(i) the amount of insurance stated in Schedule A; or

(ii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(b) The Company will pay only those costs, attorneys' fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations.

8. APPORTIONMENT:

If the land described in Schedule [A][C] consists of two or more parcels which are not used as a single site, and a loss is established affecting one or more of the parcels but not all, the loss shall be computed and settled on a pro rata basis as if the amount of insurance under this policy was divided pro rata as to the value on Date of Policy of each separate parcel to the whole, exclusive of any improvements made subsequent to Date of Policy, unless a liability or value has otherwise been agreed upon as to each parcel by the Company and the insured at the time of the issuance of this policy and shown by an express statement or by an endorsement attached to this policy.

9. LIMITATION OF LIABILITY:

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the land, or cures the claim of unmarketability of title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title as insured.

(c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of the Company.

10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY:

All payments under this policy, except payments made for costs, attorneys' fees and expenses shall reduce the amount of the insurance *pro tanto*.

11. LIABILITY NONCUMULATIVE:

It is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed, assumed, or taken subject, or which is hereafter executed by an insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy to the insured owner.

12. PAYMENT OF LOSS:

(a) No payment shall be made without producing this policy or an accurate facsimile for endorsement of the payment unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter.

13. SUBROGATION UPON PAYMENT OR SETTLEMENT:**(a) The Company's Right of Subrogation**

Whenever the Company shall have settled and paid a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit the Company to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the insured claimant, the Company shall be subrogated to these rights and remedies in the proportion which the Company's payment bears to the whole amount of the loss.

If loss should result from any act of the insured claimant, as stated above, that act shall not void this policy, but the Company, in that event, shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

(b) The Company's Rights Against Non-insured Obligors

The Company's right of subrogation against non-insured obligors shall exist and shall include, without limitation, the rights of the insured to indemnities, guaranties, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments which provide for subrogation rights by reason of this policy.

(c) No Subrogation to the Rights of the United States

Notwithstanding the provisions of Conditions and Stipulations Section 13(a) and (b), whenever the Company shall have settled and paid a claim under this policy, the Company shall not be subrogated to the rights of the United States. The Attorney General may elect to pursue any additional remedies which may exist, and the Company may be consulted. If the Company agrees in writing to reimburse the United States for all costs, attorneys' fees and expenses, to the extent that funds are recovered, they shall be applied first to reimbursing the Company for the amount paid to satisfy the claim, and then to the United States.

14. ARBITRATION ONLY BY AGREEMENT:

Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters shall be arbitrated only when agreed to by both the Company and the insured.

The law of the United States, or if there be no applicable federal law, the law of the situs of the land shall apply to an arbitration under the title insurance arbitration rules.

A copy of the rules may be obtained from the Company upon request.

15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT:

(a) This policy together with all endorsements, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the title to the estate or interest covered hereby or by any action asserting such claim, shall be restricted to this policy.

(c) No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the president, a vice president, the secretary, an assistant secretary, or validating officer or authorized signatory of the Company.

16. SEVERABILITY:

In the event any provision of the policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision and all other provisions shall remain in full force and effect.

17. NOTICES, WHERE SENT.

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company at (fill in).

NOTE: Bracketed [] material optional

[4-1-93; 13.14.18.53 NMAC - Rn, 13 NMAC 14.8.A.34, 5-15-00; Repealed, 7-1-05; 13.14.18.53 NMAC - Rn, 13.14.18.47 NMAC, 8-1-08; A, 7-31-14]

13.14.18.54 NM FORM 35: NOTICE TO PURCHASER INSURED:

NOTICE TO PURCHASER INSURED

[NM Form 35]

Name of Purchaser(s): _____

Commitment No.: _____ Commitment issue date: _____

Short Description of Property: _____

Name and Telephone Number of Agency/Insurer ("Company"): _____

READ THIS NOTICE TO FAMILIARIZE YOURSELF WITH ADDITIONAL COVERAGES AVAILABLE

The New Mexico [~~Insurance Department~~] Office of the Superintendent of Insurance requires that this Notice be given in connection with all commitments/binders issued for title insurance owner's policies on one to four residential family properties.

THIS NOTICE SHOULD BE RETURNED TO THE COMPANY AT THE EARLIEST POSSIBLE TIME. IT MUST BE SIGNED NOT LATER THAN CLOSING. FAILURE TO ACT IMMEDIATELY COULD DELAY CLOSING SINCE NO TITLE POLICY CAN BE ISSUED UNTIL THIS DOCUMENT IS SIGNED AND RETURNED TO THE COMPANY.

Standard title insurance policies do not cover certain risks. These risks include the standard exceptions shown on your commitment/binder schedule "B", which will also be part of your policy. Standard exceptions 1, 2, 3, 4, and 5 (like all the exceptions) limit the coverage under your title policy. However, some of this coverage can be reinstated as described below.

Standard Exception 1 (Parties in Possession) excludes coverage for certain claims of tenants, squatters or other persons who may claim possession of the property. Standard Exception 1 may be deleted and the coverage reinstated if you meet certain requirements. There is no extra premium charge for this coverage, but there may be a charge for inspection of the property.

Do you want this coverage? Yes _____ No _____

Standard Exception 2 (Unrecorded Easements) excludes coverage for easements not shown in the public records. Standard exception 2 may be deleted and the coverage reinstated if you meet certain requirements. There is no extra premium charge for this coverage, but a survey meeting the insurer's requirements is required and there may be a charge for an inspection.

Do you want this coverage? Yes _____ No _____

Standard Exception 3 (Survey Protection) excludes coverage for encroachments, overlaps, conflicts in boundary lines, shortages in area, or other matters which would be disclosed by an accurate survey and inspection of the premises. Standard exception 3 may be deleted and the coverage reinstated if you meet certain requirements. The charge for this coverage is 15% of the full basic rate, and you must provide a survey meeting the insurer's requirements for insurability.

Do you want this coverage? Yes _____ No _____

Standard Exception 4 (Lien Coverage) excludes coverage for certain liens (i.e. claims filed for payment for services and materials provided in connection with the property) not filed in the public records on the policy date. Standard exception 4 may be deleted and the coverage reinstated if you satisfy certain requirements. The charge for this coverage is \$25 if the statutory time limit for filing a lien has expired. If the time limit has not expired, the charge is \$3.00 for each \$1,000 of insurance. In either case, you will have to provide information that the company requires, and the Buyer or Seller will be responsible for any cost of providing such information.

Do you want this coverage? Yes _____ No _____

PLEASE ACKNOWLEDGE YOU HAVE BEEN MADE AWARE THAT YOU MAY INCREASE YOUR TITLE POLICY AMOUNT IF YOU ADD IMPROVEMENTS, OR IF THE VALUE OF YOUR PROPERTY INCREASES OVER TIME, BY REQUESTING AN INCREASE IN COVERAGE AND PAYING THE APPLICABLE PREMIUMS. THIS WILL NOT CHANGE THE TERMS OF THE POLICY OTHER THAN THE AMOUNT.

_____ initial here

Upon the company's receipt of this signed notice, [if] it may require that certain information and documents be produced. For example, a survey, inspection, lien waivers, affidavits, financial statements, etc. may be requested. The information requested will vary depending upon what additional coverage you have requested, the insurer's guidelines for issuing such coverage and the particular transaction involved. Providing this information and examining it may extend the length of time needed to close and to prepare your title policy. TO

AVOID DELAYS YOU ARE REQUESTED TO FILL OUT, SIGN AND RETURN THIS NOTICE TO THE COMPANY AS SOON AS POSSIBLE, ESPECIALLY IF YOU WANT ANY OF THE ADDITIONAL COVERAGES.

If you need further information concerning cost or requirements for obtaining the coverages only, you should call the Company at the telephone number given at the beginning of this Notice. IF YOU DO NOT UNDERSTAND THE ADDITIONAL COVERAGES, OR WANT TO KNOW IF YOU NEED THESE COVERAGES, YOU ARE ENCOURAGED TO SEEK AN ATTORNEY'S ADVICE. THE CLOSING OFFICER AND THE COMPANY'S PERSONNEL ARE NOT REQUIRED AND MAY NOT BE QUALIFIED TO ANSWER SUCH QUESTIONS.

Purchaser(s) _____ Date _____
[6-16-86...4-3-95; 13.14.18.54 NMAC - Rn, 13 NMAC 14.7.E.8 through 14.7.E.11, 5-15-00; 13.14.18.54 NMAC - Rn, 13.14.18.48 NMAC & A, 8-1-08; A, 8-17-09; A, 7-31-14]

13.14.18.60 NM FORM 41 - LIMITED PRE-FORECLOSURE TITLE INSURANCE POLICY (ALTA 12-3-12):

[Cover page:

**Foreclosure Title Insurance Policy
Issued By
Blank Title Insurance Company
[NM Form 41]**

SUBJECT TO THE LIMITATIONS CONTAINED HEREIN, THE EXCLUSIONS FROM COVERAGE, THE LIMITS OF LIABILITY AND OTHER PROVISIONS OF THE CONDITIONS AND STIPULATIONS THIS POLICY, BLANK TITLE INSURANCE COMPANY, a Blank corporation, herein called the Company, insures the insured named in Schedule A against loss or damage sustained by the Insured in the event that, at Date of Policy:

- 1. The title to the herein described estate or interest is not vested in the vestee name in Schedule A.
- 2. Except for the matters shown in Schedule B, there are defects, liens, encumbrances or other matters affecting title to the estate or interest in the land shown in Schedule A, provided that such matters are not necessarily shown in the order of their priority.
- 3. The current interest holders claiming some right, title or interest by reason of the matters shown in Schedule B are not shown therein.

THIS FORECLOSURE TITLE INSURANCE POLICY IS FURNISHED SOLELY FOR THE PURPOSE OF FACILITATING THE FILING OF THE ACTION TO FORECLOSE THE MORTGAGE OR DEED OF TRUST OF THE INSURED OR TO NON-JUDICIALLY FORECLOSE A DEED OF TRUST. IT SHALL NOT BE USED OR RELIED UPON FOR ANY OTHER PURPOSE.

Dated: _____

BLANK TITLE INSURANCE COMPANY

By: _____

Schedule A:

Order No. _____
Liability _____
Premium \$ _____
Policy/Order No. _____

- 1. Name of Insured:
- 2. Date of Policy:
- 3. This Foreclosure Guarantee Policy is furnished solely for the purpose of facilitating the filing of an action to foreclose the following described mortgage or lien of the insured:
- 4. The estate or interest in the Land which is covered by this policy is:
- 5. Title to the estate or interest in the Land is vested in:
- 6. The Land referred to in this policy is described as follows:

Schedule B:

The title to the estate or interest in the land described or referred to in Schedule A is subject to the following matters, if any be shown:

- 1:
- 2:
- 3:
- 4:
- 5:
- 6:
- 7:

Conditions and stipulations:

1. Definition of Terms. The following terms when used in the policy mean:

(a) "date": the effective date of the policy shown in Schedule A.

(b) "insured": the party or parties named as the insured mortgagee or lienholder of record in this policy, or on a supplemental writing executed by the Company.

(c) "insured claimant": an insured claiming loss or damage.

(d) "land": the land described or referred to in Schedule A and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule A nor any right, title, interest, estate or easement in abutting streets, roads, avenue, alleys, lanes, or waterways.

(e) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.

(f) "public records": records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers of value and without knowledge.

2. Exclusions from Coverage of this policy. The company assumes no liability for loss by reason of the following:

(a) Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.

(b) (1) Unpatented mining claim; (2) reservations or exceptions in patents or in acts authorizing the issuance thereof; (3) water rights, claims or title to water, whether or not the matters excluded by (1), (2) or (3) are shown by the public records.

(c) Assurances to title to any property beyond the lines of the land expressly described in the description set forth in Schedule A of this policy, or title to streets, roads, avenues, lanes, way or waterways in which such land abuts, or the right to maintain therein vaults, tunnels, ramps, or any other structure or improvement; or any rights or easements therein unless such property, rights or easements are expressly and specifically set forth in said description.

(d) Defects, liens, encumbrances, adverse claims or other matters (1) whether or not shown by the public records, and which are created, suffered, assumed or agreed to by one or more of the insured; (2) which result in no loss to the insured; or (3) which do not result in the invalidity or potential invalidity of any judicial or nonjudicial proceeding which is within the scope and purpose of assurances provided.

3. Notice of Claim to Be Given by Insured Claimant. An insured shall notify the Company promptly in writing of any claim of title or interest which is adverse to the title to the estate or interest, as state herein, and which might cause loss or damage for which the Company may be liable by virtue of this policy. If prompt notice shall not be given to the Company, then all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

4. No Duty to Defend or Prosecute. The Company shall have no duty to defend or prosecute any action or proceeding, nor to pay any attorney's fees, costs or expenses incurred in such action or proceeding, to which the insured is a party, notwithstanding the nature of any allegation in such action or proceeding.

5. Company's Option to Defend or Prosecute Actions; Duty of Insured to Claimant to Cooperate. Even though the Company has not duty to defend or prosecute as set forth in Paragraph 4 above:

(a) The Company shall have the right, at its sole option and cost, to institute and prosecute any action or proceeding, interpose a defense, as limited in Paragraph 5(b), or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or

interest as stated herein, or to establish the lien rights of the insured, or to prevent or reduce loss or damage to the insured. The company may take any appropriate action under the terms of this policy, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

(b) If the Company elects to exercise its options as stated in Paragraph 5(a), the Company shall have the right to select counsel of its choice (subject to the right of such insured to object for reasonable cause) to represent the insured and shall not be liable for and will not pay the fees of any other counsel, nor will the Company pay any fees, costs or expenses incurred by an insured in the defense of those causes of action which allege matters not covered by this policy.

(c) Whenever the Company shall have brought an action or interposed a defense as permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from an adverse judgment or order.

(d) In all cases where this policy permits the Company to prosecute or provide for the defense of any action or proceeding, an insured shall secure to the Company the right to so prosecute or provide for the defense of any action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of such insured for this purpose. Whenever requested by the Company, an insured, at the Company's expense, shall give the Company all reasonable aid in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest as stated herein, or to establish the lien rights of the insured. If the Company is prejudiced by the failure of the insured to furnish the required cooperation, the Company's obligations to the Insured under the policy shall terminate.

6. Proof of Loss or Damage.

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided to the company, a proof of loss or damage signed and sworn to by the insured shall be furnished to the Company within ninety (90) days after the insured shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the matters covered by this policy which constitute the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure to the insured to provide the required proof of loss or damage, the Company's obligation to such insured under the policy shall terminate. In addition, the insured may reasonably be required to submit to examination under oath by any authorized representative of the company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage.

Further, if requested by any authorized representative of the Company, the insured shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the insured provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the insured to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in the above paragraph, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy to the insured for that claim.

7. Options to Pay or Otherwise Settle Claims: Termination of Liability. In Case of a claim under this policy, the company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Liability or to Purchase the Indebtedness Secured by the Mortgage.

The Company shall have the option to pay or settle or compromise for or in the name of the insured any claim which could result in loss to the insured within the coverage of this policy or, the Company shall have the option to purchase from said mortgagee or lienholder the indebtedness secured by said mortgage or said lien for the amount owing thereon, together with any cost, reasonable attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of purchase.

Such purchase, payment or tender of payment of the full amount of the policy shall terminate all liability of the Company hereunder. In the event after notice of claim has been given to the Company by the insured the Company offers to purchase said indebtedness, the owner of such indebtedness shall transfer and assign said indebtedness, together with any collateral security, to the Company upon payment of the purchase price.

Upon the exercise by the Company of the option(s) provided for in this Section, the Company's obligation to the insured under this policy for the claimed loss or damage, other than to make the payment required, if any, in this Section, shall terminate, including any obligation to continue the defense or prosecution of any litigation for which the Company has exercised its options under Section 5, and the policy shall be surrendered to the Company for cancellation.

(b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.

To pay or otherwise settle with other parties for or in the name of an insured claimant any claim assured against under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of the Option(s) provided for in this Section, the company's obligation to the insured under this policy for the claimed loss or damage, other than to make the payment required, if any, in this Section, shall terminate, including any obligation to continue the defense or prosecution of any litigation for which the Company has exercised its option(s) under Section 5.

8. ~~Determination and Extent of Liability.~~ This policy is a contract of Indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of reliance upon the assurances set forth in this policy and only to the extent herein described, and subject to the exclusions stated in Section 2. The liability of the Company under this policy to the insured shall not exceed the least of:

(a) the amount of liability stated in Schedule A;

(b) The amount of the unpaid principal indebtedness secured by the mortgage of an insured mortgagee, as limited or provided under Section 7 of these Conditions and Stipulations or as reduced under Section 10 of these Conditions and Stipulations, at the time the loss or damage assured against by this policy occurs, together with interest thereon;

(c) the difference between the value of the estate or interest covered hereby as stated herein and the value of the estate or interest subject to any defect, lien or encumbrance assured against by this policy; or

(d) the amount of any valid lien or encumbrance asserted against the land in a superior position to the insured's lien and not shown in Schedule B.

9. Limitation of Liability

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures any other matter assured against by this policy in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of any litigation by the company, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction and disposition of all appeals therefrom, or a settlement consented to by the Company in accordance with Paragraph 9(c), adverse to the title as stated herein.

(c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim or suit without the proper written consent of the Company.

10. ~~Reduction of Liability or Termination of Liability.~~ All payments under this policy, except payments made for costs, attorneys' fees and expenses pursuant to Section 5, shall reduce the amount of liability by the amount paid.

11. Payment of Loss

(a) No payment shall be made without producing this policy for endorsement of the payment unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within (3) days thereafter.

12. Subrogation upon Payment or Settlement.

Whenever the Company shall have settled and paid a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant.

The Company shall be subrogated and/or entitled to all rights and remedies which the insured would have against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured shall permit the Company to sue, compromise or settle in the name of the insured and to use the name of the insured in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the insured, the Company shall be subrogated to all rights and remedies of the insured after the insured shall have recovered its principal, interest, and costs of collection.

13. Arbitration.

Unless prohibited by applicable law, either the Company or the Insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters when the amount of Liability is \$1,000,000 or less shall be arbitrated at the option of either the Company or the insured. All arbitrable matters when the amount of liability is in excess of \$1,000,000 shall be arbitrated only when agreed to by both the Company and the insured. The Rules in effect at Date of Policy shall be binding upon the

parties. The award may include attorneys' fee only if the law of the state in which the land is located permit a court to award attorneys fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

14. Liability Limited to This Policy; Policy Entire Contract.

(a) This policy together with all endorsements, if any, attached hereto by the Company is the entire policy contract between the insured and the Company. In interpreting any provision of this policy, the policy shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, or any action asserting such claim, shall be restricted to this policy.

(c) No amendment of, or endorsement to, this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

15. Notices Where Sent. All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company at: _____.]

LIMITED PRE-FORECLOSURE POLICY [12-3-12]

Issued By

BLANK TITLE INSURANCE COMPANY

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at the address shown in Section 15 of the Conditions.

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured and is not an abstract of title or a report of a condition of title.

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE AND THE CONDITIONS, BLANK TITLE INSURANCE COMPANY, a Blank corporation (the "Company"), insures as of Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of any of the following matters, if not identified in Schedule B:

1. _____ An instrument purporting to change or evidencing a change in the ownership of the Title and recorded in the public records subsequent to the recording of the Insured's Mortgage.

2. _____ An instrument purporting to create a right or interest affecting the Title and recorded in the Public Records subsequent to the recording of the Insured's Mortgage.

3. _____ A Mortgage, notice of Mechanic's Lien, Judgment Lien, federal tax lien, or other lien affecting the Title and recorded in the Public Records subsequent to the recording of the Insured's Mortgage.

4. _____ A Judgment Lien or federal tax lien affecting the Title and recorded in the Public Records against the names of the mortgagors of the Insured's Mortgage prior to the recording of the Insured's Mortgage.

5. _____ A Notice of a Judicial Proceeding affecting the Title and recorded in the Public Records subsequent to the recording of the Insured's Mortgage.

6. _____ A Notice of Bankruptcy specified in 11 U.S.C. Section 549 (c), affecting the Title and recorded in the Public Records subsequent to the recording of the Insured's Mortgage.

7. _____ The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records subsequent to the recording of the Insured's Mortgage.

8. _____ Ad valorem real estate taxes and assessments imposed by a governmental authority due and payable at Date of Policy.

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. _____ (a) _____ any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to:
- _____ (i) _____ the occupancy, use, or enjoyment of the Land;
- _____ (ii) _____ the character, dimensions, or location of any improvement erected on the Land;
- _____ (iii) _____ the subdivision of Land; or
- _____ (iv) _____ environmental protection;
- _____ or the effect of any violation of these laws, ordinances, or governmental regulations;
- _____ (b) _____ any governmental police power;
2. _____ rights of eminent domain. This exclusion does not modify or limit the coverage provided under Covered Risk 7.
3. _____ defects, liens, encumbrances, adverse claims, transfers of the Title or other matters:
- _____ (a) _____ created, suffered, assumed, or agreed to by the Insured;
- _____ (b) _____ known to the Insured whether or not disclosed in the Public Records;
- _____ (c) _____ resulting in no loss or damage to the Insured;
- _____ (d) _____ attaching or created subsequent to Date of Policy;
- _____ (e) _____ not recorded in the Public Records at Date of Policy; or
- _____ (f) _____ resulting in loss or damage that would not have been sustained if the Insured had paid value for the Insured's Mortgage;
4. _____ invalidity, unenforceability, or lack of priority of the Insured's Mortgage, or any assignment of it.
5. _____ any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws. This exclusion does not modify or limit the coverage provided under Covered Risk 6.
6. _____ any claim that Title to the Land is an Unmarketable Title.

CONDITIONS

1. DEFINITION OF TERMS

The following terms when used in this policy mean:

- (a) _____ "Amount of Insurance" is the amount stated in Schedule A as it may be decreased by Section 9 of these conditions.
- (b) _____ "Curative Action" is an act, payment or proceeding to eliminate a matter included within the Covered Risks but not excluded by the Exclusions from Coverage or identified in Schedule B.
- (c) _____ "Date of Policy" is the date designated as "Date of Policy" in Schedule A.
- (d) _____ "Indebtedness" is the obligation secured by the Insured's Mortgage including one evidenced by electronic means authorized by law and, if that obligation is the payment of a debt, the Indebtedness is the sum of:
- _____ (i) _____ the amount of the principal disbursed as of Date of Policy;
- _____ (ii) _____ interest on the loan;
- _____ (iii) _____ the expenses of foreclosure and any other costs of enforcement;
- _____ (iv) _____ the amounts to pay taxes and insurance; and
- _____ (v) _____ the reasonable amounts expended to prevent deterioration of improvements;
- _____ but the Indebtedness is reduced by the total of all payments and by any amount forgiven by an Insured.
- (e) _____ "Insured's Mortgage" is the Mortgage described in paragraph 3 of Schedule A.
- (f) _____ "Insured" is the Insured named in Schedule A.
- (g) _____ "Judgment Lien" is a judgment, abstract of judgment, tax lien (other than a lien for ad valorem real estate taxes or assessments), or support lien recorded in the Public Records, and having the effect of a judgment for the payment of money.
- (h) _____ "Knowledge" or "Known" is actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.
- (i) _____ "Land" is the Land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways.
- (j) _____ "Mechanic's Lien" is a private, statutory lien or claim of lien, affecting the Title that arises from services provided, labor performed, or materials or equipment furnished for the construction of an improvement or work on the Land.
- (k) _____ "Mortgage" means mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means

authorized by law.

(l) “Notice of Bankruptcy” is a document specified in 11 U.S.C. Section 549 (c) setting forth the nature and venue of and debtor in a bankruptcy proceeding.

(m) “Notice of a Judicial Proceeding” is a notice of *lis pendens* or other document required or permitted under state statutes to provide constructive notice of a judicial proceeding affecting the Title and setting forth the nature and venue of and parties to the proceeding and describing any part of the Land.

(n) “Public Records” means Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge.

(o) “Title” is the estate or interest described in Schedule A.

(p) “Unmarketable Title” means title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title or a prospective purchaser of the Insured’s Mortgage to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.

2. NOTICE OF CLAIM TO BE GIVEN BY INSURED

The Insured shall notify the Company promptly in writing in case Knowledge shall come to the Insured of a matter that might cause loss or damage for which the Company may be liable by virtue of this policy. If the Company is prejudiced by the failure of the Insured to provide prompt notice, the Company’s liability to the Insured under the policy shall be reduced to the extent of the prejudice.

3. NO DUTY TO DEFEND OR PROSECUTE

The Company shall have no duty to defend or prosecute any action or proceeding to which the Insured is a party, notwithstanding the nature of any allegation in such action or proceeding. However, the Company has the rights listed in Section 4 of these Conditions.

4. COMPANY’S OPTION TO DEFEND OR PROSECUTE ACTIONS; DUTY OF INSURED TO COOPERATE

(a) In addition to the options contained in Section 6 of these Conditions and whether or not the Company shall be liable to the Insured, the Company shall have the right, but not the obligation, at its own cost, to undertake any Curative Action that in its opinion may prevent or reduce loss or damage to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.

(b) If the Company brings an action or asserts a defense permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal any adverse judgment or order.

(c) In all cases where this policy permits the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at the Company’s option, the name of the Insured for this purpose.

(d) If requested by the Company, the Insured, at the Company’s expense, shall give the Company all reasonable aid: (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement; and (ii) in any other lawful act that, in the opinion of the Company, may be necessary or desirable to avoid or mitigate a loss under this policy. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company’s obligations to the Insured under the policy shall terminate, with regard to the matter or matters requiring such cooperation.

5. PROOF OF LOSS OR DAMAGE

(a) In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured furnish a signed proof of loss. The proof of loss must describe the matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

(b) The Company may reasonably require the Insured to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos, whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS: TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance or to Purchase the Indebtedness.

(i) _____ to pay or tender payment of the amount of insurance under this policy. In addition, if the Company exercises its rights under Section 4 of these conditions it will pay any costs, attorneys' fees, and expenses authorized by the Company and incurred by the Insured; or

(ii) _____ to purchase the indebtedness for the amount of the indebtedness on the date of purchase. When the Company purchases the indebtedness, the Insured shall transfer, assign, and convey to the Company the indebtedness and the Insured's Mortgage, together with any collateral security.

Upon the exercise by the Company of either of the options provided for in subsections (a)(i) or (ii), all liability and obligations of the Company to the Insured under this policy for the claimed loss or damage, other than to make the payments required in those subsections, shall terminate.

(b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured.

(i) _____ to pay or otherwise settle with other parties for or in the name of an Insured any claim insured against under this policy. In addition, if the Company exercises its rights under Section 4 of these conditions it will pay any costs, attorneys' fees, and expenses authorized by the Company and incurred by the Insured; or

(ii) _____ to pay or otherwise settle with the Insured the loss or damage provided for under this policy. In addition, if the Company exercises its rights under Section 4 of these Conditions it will pay any costs, attorneys' fees, and expenses authorized by the Company and incurred by the Insured.

Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), all liability and obligations of the Company to the Insured under this policy for the claimed loss or damage, other than the payments required in those subsections, shall terminate.

7. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured who has suffered loss or damage by reason of matters insured against by this policy.

The extent of liability of the Company for loss or damage under this policy shall not exceed the least of:

(a) _____ the Amount of Insurance;

(b) _____ the Indebtedness;

(c) _____ costs, attorneys' fees, and expenses incurred or authorized in writing by the Company in completing any Curative Action; or

(d) _____ the difference between the value of the Title without the matter insured against and the value of the Title subject to the matter insured against by this policy.

8. LIMITATION OF LIABILITY

(a) _____ If the Company cures any matter insured against by this policy in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.

(b) _____ In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals.

(c) _____ The Company shall have no liability for loss or damage to the Insured, resulting from any delay in the enforcement of the Insured Mortgage, including lost interest, reduction in the value of the security or collateral, taxes, assessments, insurance or maintenance.

(d) _____ The Company shall not be liable for loss or damage to, or attorneys' fees, expenses or liability incurred by, the Insured in conducting a Curative Action or settling any claim or suit without the prior written consent of the Company.

9. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

(a) _____ All payments under this policy, except payments made for costs, attorneys' fees, and expenses under Section 4 of these conditions, shall reduce the Amount of Insurance by the amount of the payments.

(b) _____ The voluntary satisfaction or release of the Insured's Mortgage, other than foreclosure of the Insured's Mortgage or the acceptance of delivery of a deed of lieu of foreclosure of the Insured's Mortgage, shall terminate all liability of the Company.

10. PAYMENT OF LOSS

When liability and the extent of loss or damage have been definitely fixed in accordance with these conditions, the payment shall be made within 30 days.

11. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT

(a) _____ The Company's Right to Recover.

Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured in the Title or Insured's Mortgage and to all other rights and remedies in respect to the claim that the Insured has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company,

the Insured shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured shall permit the Company to sue, compromise, or settle in the name of the Insured and to use the name of the Insured in any transaction or litigation involving these rights and remedies.

If a payment on account of a claim does not fully cover the loss of the Insured, the Company shall defer the exercise of its right to recover until after the Insured shall have recovered its loss.

(b) The Company's Rights Against Noninsured Obligors.

The Company's right of subrogation includes the Insured's rights against non-insured obligors including the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.

The Company's right of subrogation shall not be avoided by acquisition of the Insured's Mortgage by an obligor who acquires the Insured's Mortgage as a result of an indemnity, guarantee, other policy of insurance, or bond, and the obligor will not be an Insured under this policy.

12. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

(a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage that arises out of a matter insured against by this policy or by any action asserting such matter shall be restricted to this policy.

(c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person.

(d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it shall not: (i) modify any of the terms and provisions of the policy; (ii) modify any prior endorsement; (iii) extend the Date of Policy; or (iv) increase the Amount of Insurance.

13. SEVERABILITY

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

14. CHOICE OF LAW; FORUM

(a) Choice of Law: The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located.

The law of the jurisdiction where the Land is located shall apply to determine the validity of matters insured against under this policy and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.

(b) Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

15. NOTICES, WHERE SENT

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at [fill in].

Schedule A

Name and Address of Title Insurance Company:

[File No.:] _____ Policy No.: _____

[Address Reference: _____]

Amount of Insurance: \$ _____ [Premium: \$ _____]

Date of Policy: _____ [at a.m./p.m.]

1. Name of Insured:

2. The estate or interest in the Land that is the subject of coverage in this policy is:

3. The Insured's Mortgage is described as follows:

4. The Land referred to in this policy is described as follows:

Schedule B

This policy does not insure against loss or damage by reason of:

(List matters identified in accordance with the Covered Risks.)

[6-1-97; 13.14.18.60 NMAC - Rn, 13 NMAC 14.8.A.39, 5-15-00; 13.14.18.60 NMAC - Rn, 13.14.18.54 NMAC, 8-1-08; A, 09-15-10; A, 7-31-14]

13.14.18.61 NM FORM 42: LIMITED PRE-FORECLOSURE TITLE INSURANCE POLICY DOWN DATE ENDORSEMENT:

~~[Foreclosure Title Insurance Policy Down Date Endorsement~~

~~Attached To Policy No. _____~~

~~Issued By~~

~~Blank Title Insurance Company~~

~~[NM Form 42]~~

The following matters appear of record since _____ (date of policy or previous endorsement):

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy; (ii) modify any prior endorsements; (iii) extend the date of policy; or (iv) increase the amount of insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

BLANK TITLE INSURANCE COMPANY

Dated: _____

By: _____, Authorized Signatory]

American Land Title Association Endorsement (Limited Pre-Foreclosure Down Date), Adopted 12-03-12

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

1. The Date of Policy is changed to: _____

2. Schedule A is also amended as follows:

3. Schedule B is amended to add the following matters:

This endorsement is issued as part of the policy. Except as it expressly states, it does not: (i) modify any of the terms and provisions of the policy; (ii) modify any prior endorsements; (iii) extend the Date of Policy; or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____

Authorized Signatory

[6-1-97; 13.14.18.61 NMAC - Rn, 13 NMAC 14.8.A.40, 5-15-00; 13.14.18.61 NMAC - Rn, 13.14.18.55 NMAC, 8-1-08; A, 10-1-12; A, 7-31-14]

13.14.18.64 NM FORM 45 - RESIDENTIAL LIMITED COVERAGE JUNIOR LOAN POLICY:

~~[Cover page:~~

~~Residential Limited Coverage Junior Loan Policy~~

~~Issued By~~

~~Blank Title Insurance Company~~

~~[NM Form 45]~~

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS AND THE CONDITIONS AND STIPULATIONS HEREOF, AND PROVIDED THAT THE LAND IS A ONE-TO-FOUR FAMILY RESIDENCE OR CONDOMINIUM UNIT, BLANK-TITLE INSURANCE, a Blank corporation, herein called the Company, insures, as of Date of policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the insured by reason of:

The Grantee not being the named grantee on the last document recorded in the public records purporting to vest title to the fee estate in the land or the description of the land in this policy not being the same as that contained in said document.

Any monetary lien affecting the title, recorded in the public records:

Any ad valorem taxes or assessments of any governmental taxing authority which constitute a lien on the title and which appear on Date of Policy in the official ad valorem tax records where the land is located.

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the insured, but only to the extent provided in the Conditions and Stipulations:

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

BY: _____, President

BY: _____, Secretary

Schedule A:

Policy No:

{Premium: \$}

Amount of Insurance: \$

Date of Policy: _____ at [a.m.] [p.m.]

Name of Insured:

Grantee:

The land referred to in this policy is described as follows:

EXCEPTIONS

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

[TAX INFORMATION]

Exclusions from coverage:

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. Any invalidity unenforceability or ineffectiveness of the insured's mortgage:

2. Defects, liens, encumbrances, adverse claims or other matters:

(a) created, suffered, assumed or agreed to by the insured claimant;

(b) known to the insured claimant whether or not disclosed in the public records;

(c) resulting in no loss or damage to the insured claimant; or

(d) recorded or filed in the public records subsequent to Date of Policy.

Conditions and stipulations:

Definition of Terms: The following terms when used in this policy mean:

(a) "insured": the insured named herein. The term also includes the owner of the indebtedness secured by the insured's mortgage. The Company reserves all rights and defenses against any insured acquiring an interest in the insured's mortgage subsequent to Date of Policy which the Company would have had against the insured named herein or any subsequent insured.

(b) "insured claimant": an insured claiming loss or damage hereunder.

(c) "insured's mortgage": the mortgage or deed of trust shown in paragraph B of an ALTA Endorsement Form JR-1 attached to this policy.

(d) "knowledge" or "known": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of any public records.

"land": the land described herein and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area streets, roads, alleys, avenues, alleys, lanes, ways or waterways.

"monetary lien": any mortgage, deed of trust, judgment lien or other lien affecting the title securing the obligation to pay money, but not including any lien created in any easement, covenant, condition, restriction, declaration of condominium or planned unit development, except to the extent that a separate notice of enforcement of a specific delinquent charge or assessment affecting the title has been recorded in the public records.

"public records": records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge.

Defense and Prosecution of Actions – Notice of claim to be given by an insured claimant

(a) Upon written request by the insured and subject to the options contained in Section 4 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an insured in litigation in which any third party asserts a claim which may cause loss or damage, but only as to those stated causes of action alleging a matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the insured to object for reasonable cause) to represent the insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by the insured in the defense of those causes of action which allege matters not insured against by this policy.

(b) The insured shall notify the Company promptly in writing in case (i) of any litigation as set forth in (a) above, (ii) knowledge shall come to an insured hereunder of any claim which might cause loss or damage for which the Company may be liable by virtue of this policy.

If prompt notice shall not be given to the Company, then all liability of the Company shall cease and terminate in regard to the matter or matters for which prompt notice is required; provided, however, the failure to notify shall in no case prejudice the rights of the insured under this policy unless and except to the extent that the Company shall be prejudiced by such failure.

(c) The Company shall have the right at its own cost to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to prevent or reduce loss or damage insured against this policy; and the Company may take any appropriate action, whether or not it shall be liable under the terms of this policy, and shall not thereby concede liability or waive any provisions of this policy.

Whenever the Company shall have brought any action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination in a court of competent jurisdiction and expressly reserves the right in its sole discretion, to appeal from any adverse judgment or order.

In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured hereunder shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the insured for such purpose. Whenever requested by the Company, the insured shall give the Company, at the Company's expense, all reasonable aid (i) in any action or proceeding in effecting settlement, securing evidence, obtaining witnesses, or prosecuting or defending the action proceeding, and (ii) in any other act which in the opinion of the Company may be necessary or desirable to prevent or reduce loss or damage insured against by this policy, including but not limited to executing corrective or other documents.

Proof of Loss or Damage – Limitation of Action

In addition to the notices required under Section 2 of these Conditions and Stipulations, a proof of loss or damage, signed and sworn to by the insured claimant shall be furnished to the Company within 90 days after the insured claimant shall ascertain or determine the facts giving rise to loss or damage. The proof of loss or damage shall describe the matter insured against by this policy which constitutes the basis of loss or damage, and, when appropriate, state the basis of calculating the amount of the loss or damage.

Should the proof of loss or damage fail to state facts sufficient to enable the Company to determine its liability hereunder, insured claimant, at the written request of Company, shall furnish such additional information as may reasonably be necessary to make such determination.

Failure to furnish the proof of loss or damage shall terminate any liability of the Company under this policy as to such loss or damage.

Options to Pay or Otherwise Settle Claims; Termination of Liability

In case of a claim under this policy, the Company shall have the right to exercise the following additional options at any time:

To Pay or Tender Payment of the Amount of Insurance or to Purchase the Indebtedness:

to pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay; or

to purchase the indebtedness secured by the insured's mortgage for the amount owing thereon together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of purchase and which the Company is obligated pay.

If the Company offers to purchase the indebtedness as herein provided, the owner of the indebtedness shall transfer, assign, and convey the indebtedness and the insured's mortgage, together with any collateral security, to the Company upon payment therefor.

Upon the exercise by the Company of either of the options provided for in paragraphs (a)(i) or (a)(ii), all liability and obligations to the insured under this policy, other than to make the payment required in those paragraph, shall terminate, including any liability of obligation to defend, prosecute, or continue any litigation and the policy shall be surrendered to the Company for cancellation.

To Pay or Otherwise Settle With Parties Other than the Insured or with the Insured Claimant:

to pay or otherwise settle with other parties for or in the name of an insured claimant any claim insured against under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant authorized by the Company up to the time of payment and which the Company is obligated to pay; or

to pay or otherwise settle with the insured claimant the loss or damage provided for under this policy together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in paragraphs (b)(i) or (b)(ii), the Company's obligations to the insured under this policy for the claimed loss or damage other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

Determination and Payment of Loss

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matter insured against by this policy and only to the extent herein described:

The liability of the Company under this policy shall not exceed the least of:

the Amount of Insurance stated in Schedule A;

(ii) the amount of the unpaid principal indebtedness secured by the insured's mortgage at the time the loss or damage insured against by this policy occurs, together with interest thereon; or

(iii) if the loss is caused by a lien insured against by this policy, the difference between the value of the estate or interest in the land encumbered by the insured's mortgage without the lien insured against and the value of that estate or interest subject to the lien insured against by this policy.

The Company will pay only those costs, attorneys' fees and expenses incurred in accordance with Section 2 of these Conditions and Stipulations:

(c) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter.

Limitation of Liability

If the Company removes an alleged matter insured against by this policy in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby:

In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the insured with respect to matters insured against this policy.

(c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim

or suit without the prior written consent of the Company.

Reduction of Insurance; Termination of Liability

All payments under this policy, except payment made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance *pro tanto*.

Subrogation upon payment or settlement

Whenever the Company shall have paid or settled a claim under this policy, it shall be subrogated to the rights of the insured claimant unaffected by any act of the insured claimant limited only by the amount paid by the Company. The insured claimant shall cooperate with the Company in enforcing these subrogation rights.

Arbitration

Unless prohibited by applicable law, either the Company or the insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy any service of the company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matter shall be arbitrated at the option of either the Company or the insured. Arbitration pursuant to this policy and under the Rules in effect on the date of the demand for arbitration is made or at the option of the insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the law of the state in which the land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrators may be entered in any court having jurisdiction thereof. The law of the situs of the land shall apply to an arbitration under the Title insurance Arbitration Rules. A copy of the Rules may be obtained from the Company upon request.

Liability Limited To This Policy

This policy together with all endorsements, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

Any claim of loss or damage whether or not based on negligence, or any action asserting any claim, shall be restricted to the terms and provisions of this policy.

(c) No amendment of or endorsement to this policy can be made except by a writing enforced hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, validating officer or authorized signatory of the Company.

No payment shall be made without producing this policy for endorsement of the payment unless the policy is lost or destroyed, in which case proof of such loss or destruction shall be furnished to the satisfaction of the Company.

Severability

In the event any provision of this policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision, and all other provisions shall remain in full force and effect.

Notices where Sent

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company, Attention: Claims Department, (fill in):]

ALTA RESIDENTIAL LIMITED COVERAGE JUNIOR LOAN POLICY [Rev. 8-01-12]

Issued By

BLANK TITLE INSURANCE COMPANY

Any notice of claim and any other notice or statement in writing required to be given to the Company under this Policy must be given to the Company at the address shown in Section 15 of the Conditions.

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS AND THE CONDITIONS, and provided that the Land is a one-to-four family residence or condominium unit, Blank Title Insurance Company, a corporation, the Company, insures, as of Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. The Grantee not being the named grantee on the last document purporting to vest the Title recorded in the Public Records.
2. The description of the Land in Schedule A not being the same as that contained in the last document purporting to vest the Title recorded in the Public Records.

The following terms when used in this policy mean:

- (a) "Amount of Insurance" means the amount stated in Schedule A.
- (b) "Date of Policy" means the date designated as "Date of Policy" in Schedule A.
- (c) "Entity" means a corporation, partnership, trust, limited liability company, or other similar legal entity.
- (d) "Grantee" means the Grantee designated in Schedule A.
- (e) "Indebtedness" means the obligation if secured by the Insured's Mortgage. Including one evidenced by electronic means authorized by law, and if that obligation is the payment of a debt, the Indebtedness is the sum of:
 - (i) the amount of the principal disbursed if secured by the Insured's Mortgage;
 - (ii) interest on the loan;
 - (iii) the prepayment premiums, exit fees, and other similar fees or penalties allowed by law;
 - (iv) the expenses of foreclosure and any other costs of enforcement;
 but the Indebtedness is reduced by the total of all payments and by any amount forgiven by an Insured.
- (f) "Insured" is the Insured named in Schedule A if it is the owner of the Indebtedness and each successor in ownership of the Indebtedness, except a successor who is an obligor, reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured.
- (g) "Insured Claimant" is an Insured claiming loss or damage.
- (h) "Insured's Mortgage" means the Mortgage described in JRI.
- (i) "Knowledge" or "Known" means actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.
- (j) "Land" means the land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways.
- (k) "Mortgage" means Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.
- (l) "Monetary Lien" means any Mortgage, deed of trust, judgment lien or other lien affecting the Title securing the obligation to pay money, but not including any lien created in any easement, covenant, condition, restriction, or declaration of condominium or planned unit development, except to the extent that a separate notice of enforcement of a specific delinquent charge or assessment affecting the Title has been recorded in the Public Records.
- (m) "Public Records" means records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge.
- (n) "Title" means the estate or interest described in Schedule A.

2. CONTINUATION OF INSURANCE

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured after acquisition of the Title by an Insured through foreclosure of the lien of the Insured's Mortgage or deed in lieu of foreclosure.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5 of these Conditions, (ii) in case Knowledge shall come to an Insured of any claim that might cause loss or damage for which the Company may be liable by virtue of this policy. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

4. ROOF OF LOSS

In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

5. DEFENSE AND PROSECUTION OF ACTIONS

(a) Upon written request by the Insured, and subject to the options contained in Section 6 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.

(b) The Company shall have the right, in addition to the options contained in Section 6 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.

(c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal any adverse judgment or order.

6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance or to Purchase the Indebtedness.

(i) To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay; or

(ii) To purchase the Indebtedness for the amount of the Indebtedness on the date of purchase, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of purchase and that the Company is obligated to pay.

When the Company purchases the Indebtedness, the Insured shall transfer, assign, and convey to the Company the Indebtedness and the Insured Mortgage, together with any collateral security.

Upon the exercise by the Company of either of the options provided for in subsections (a)(i) or (ii), all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in those subsections, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

(b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.

(i) to pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or

(ii) to pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

7. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

(a) The extent of liability of the Company for loss or damage under this policy shall not exceed the least of

(i) the Amount of Insurance,

(ii) the Indebtedness, or

(iii) the difference between the value of the Title without the matter insured against and the value of the Title subject to the matter insured against by this policy.

(b) In the event the Insured has acquired the Title in the manner described in Section 2 of these Conditions then the extent of liability of the Company shall continue as set forth in Section 7(a) of these Conditions.

(c) In addition to the extent of liability under (a) and (b), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions. If the loss is caused by a lien insured against by this policy, the difference between the value of the estate or interest in the land encumbered by the insured's mortgage without the lien insured against and the value of that estate or interest subject to the lien insured against by this policy.

8. LIMITATION OF LIABILITY

(a) If the Company removes an alleged matter insured against by this policy in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations and shall not be liable for any loss or damage with respect to that matter.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Insured with respect to matters insured against by this policy.

(c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

9. REDUCTION OF INSURANCE; TERMINATION OF LIABILITY

(a) All payments under this policy, except payment made for costs, attorneys' fees and expenses, shall reduce the Amount of Insurance by the amount of the payment.

(b) The voluntary satisfaction or release of the Insured's Mortgage shall terminate all liability of the Company except as provided in

Section 2 of these Conditions.

10. PAYMENT OF LOSS

When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.

11. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT

(a) The Company's Right to Recover

Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to all rights and remedies of the Insured Claimant in respect to the claim that the Insured Claimant has against any person or property to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies.

If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.

(b) The Company's Rights Against Noninsured Obligors

The Company's right of subrogation includes the Insured's rights against non-insured obligors including the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.

The Company's right of subrogation shall not be avoided by acquisition of the Insured Mortgage by an obligor who acquires the Insured Mortgage as a result of an indemnity, guarantee, other policy of insurance, or bond, and the obligor will not be an Insured under this policy.

12. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

(a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage relating to the Covered Risks or any other matter shall be restricted to this policy.

(c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.

(d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

13. SEVERABILITY

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid, and all other provisions shall remain in full force and effect.

14. CHOICE OF LAW; FORUM

(a) Choice of Law: The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefore in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located.

Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims insured against by this policy and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.

(b) Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

15. NOTICES, WHERE SENT

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company at [fill in], Attention: Claims Department.

[13.14.18.64 NMAC - N, 5-15-00; 13.14.18.64 NMAC - Rn, 13.14.18.58 NMAC, 8-1-08; A, 7-31-14]

13.14.18.65 NM FORM 46: DOWN DATE ENDORSEMENT TO RESIDENTIAL LIMITED COVERAGE JR. LOAN POLICY JR 1 (08-01-12):

~~Down Date Endorsement to Residential Limited Coverage Junior Loan Policy~~

Attached to Policy No. _____

Issued By _____

Blank Title Insurance Company

[NM Form 46; ALTA JR 1]

The Company hereby insures against loss or damage sustained by the insured resulting from:

(1) Any document recorded in the public records subsequent to Date of Policy and on or prior to Date of Endorsement which purports to vest title to the fee estate in the land, except;

(2) Any monetary lien other than the insured's mortgage shown in paragraph B below, recorded in the public records subsequent to Date of Policy and on or prior to Date of Endorsement which affects the title except;

The insured's mortgage referred to in the policy is described as follows;

If the box is checked, ALTA Endorsement Form JR 2 is incorporated herein:

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

[Witness clause optional]

DATE OF ENDORSEMENT: _____

[Date of Endorsement is the date shown above or the date of recording of the insured's mortgage, whichever is later.]

BLANK TITLE INSURANCE COMPANY

BY: _____]

American Land Title Association Endorsement JR 1, Revised 8-1-12

ENDORSEMENT JR 1

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

1. _____ This endorsement is subject to the Exclusions from Coverage, the Exceptions contained in Schedule A and the Conditions in the policy.

2. _____ Date of Endorsement; _____ [or the date of recording of the Insured's Mortgage, whichever is more recent].

3. _____ The Insured's Mortgage means: (describe the Insured's Mortgage).

4. _____ The Company insures against loss or damage sustained by the Insured by reason of:

_____ a. _____ Any document purporting to vest the Title recorded in the Public Records subsequent to Date of Policy and on or prior to Date of Endorsement, except:

- _____ [i.
- _____ ii.
- _____ iii.]

_____ b. _____ Any Monetary Lien other than the Insured's Mortgage, recorded in the Public Records subsequent to Date of Policy and on or prior to Date of Endorsement except:

- _____ [i.
- _____ ii.
- _____ iii.]

5. _____ If the box is checked, this policy incorporates the ALTA Form JR 2 Endorsement:

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____

Authorized Signatory

[13.14.18.65 NMAC - N, 5-15-00; A, 5-31-00; 13.14.18.65 NMAC - Rn, 13.14.18.59 NMAC, 8-1-08; A, 7-31-14]

**13.14.18.66 NM FORM 47: ENDORSEMENT TO RESIDENTIAL LIMITED COVERAGE JUNIOR LOAN POLICY JR 2
(FUTURE ADVANCE) 08-01-12:**~~[Down Date Endorsement to Residential Limited Coverage Junior Loan Policy
Attached to Policy No. _____~~~~Issued By~~~~Blank Title Insurance Company~~~~[NM FORM 47; ALTA JR 2]~~

Provided that:

The land is a one-to-four family residence or condominium unit, and

The insured's mortgage creates a lien on the land; and

The borrower named in the insured's mortgage, ("Borrower") is the owner of the land at the date an advance is made pursuant to the note or agreement secured by the insured's mortgage referred to above; and

With respect to paragraph A below the insured's mortgage states that it secures repayment of future advances; and

The ALTA Endorsement JR 2 has been issued.

The Company hereby insures against loss or damage which the insured shall sustain by reason of:

The failure of the lien for future advances secured by the insured's mortgage to have the same priority over liens, encumbrances, and other matters disclosed by the public records as advances secured by the insured's mortgage at the date of its recording, except for the following matters:

Ad Valorem taxes or assessments;

Federal tax liens;

Environmental protection liens;

Liens, encumbrances, or other matters, the existence of which are actually know to the insured prior to the date of an advance; or

Liens imposed by law for services, labor or materials:

The invalidity or unenforceability of the lien of the insured's mortgage resulting from the provisions of the insured's mortgage which provide for changes in the rate of interest:

Loss of priority of the lien of the insured's mortgage resulting from changes in the rate of interest calculated in accordance with the formula provided in he insured's mortgage at the date it is recorded in the public records:

This Endorsement does not insure:

That the Borrower owns the land nor that the insured's mortgage creates a lien on the land, nor the validity, enforceability, or priority of the lien of the mortgage, except to the extent expressly stated; nor

Against loss or damage resulting from (1) usury, (2) any consumer credit protection or truth in lending law, or (3) bankruptcy or insolvency proceedings of the Borrower.

This endorsement is made a part of the Policy and is subject to all the terms and provisions thereof and of any prior endorsements. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the Policy and any prior endorsements, nor does it extend the effective date of the Policy and any prior endorsements, nor does it increase the face amount thereof

{Witness clause optional}

BLANK TITLE INSURANCE COMPANY

BY: _____]

American Land Title Association Endorsement JR 2 (Future Advance), Revised 8-1-12

ENDORSEMENT J2 (FUTURE ADVANCE) [08-01-12]

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

1. _____ This endorsement is subject to the Exclusions from Coverage, the Exceptions contained in Schedule A and the Conditions in the policy.
2. _____ This endorsement applies if:
 - a. _____ The Insured's Mortgage creates a valid and enforceable lien on the Title;
 - b. _____ The borrower named in the Insured's Mortgage ("Borrower") is the owner of the Title at the date an advance is made pursuant to the note or agreement secured by the Insured's Mortgage;
 - c. _____ The Insured's Mortgage secures repayment of future advances; and
 - d. _____ The policy has been endorsed with an ALTA JR 1.
3. _____ The Company insures against loss or damage sustained by the Insured by reason of:
 - a. _____ A future advance secured by the Insured's Mortgage not having the same priority over a Monetary Lien as the Insured's Mortgage except for the following matters:
 - i. _____ Ad Valorem taxes or assessments;
 - ii. _____ Federal tax liens;
 - iii. _____ Environmental protection liens;
 - iv. _____ Monetary Liens or claims of lien Known to the Insured prior to the date of an advance; or
 - v. _____ Monetary Liens or claims of lien for services, labor, materials or equipment.
 - b. _____ The invalidity or unenforceability of the lien of the Insured's Mortgage resulting from the provisions of the Insured's Mortgage which provide for changes in the rate of interest.
 - c. _____ Loss of priority of the lien of the Insured's Mortgage resulting from changes in the rate of interest calculated in accordance with the formula provided in the Insured's Mortgage at the date it is recorded in the Public Records.
4. _____ This Endorsement does not insure:
 - a. _____ That the Borrower owns the Title nor that the Insured's Mortgage creates a lien on the Title, nor the validity, enforceability, or priority of the lien of the Insured's Mortgage, except to the extent expressly stated; nor
 - b. _____ Against loss or damage resulting from (1) usury, (2) any consumer credit protection or truth in lending law, or (3) bankruptcy or insolvency proceedings of the Borrower.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____

Authorized Signatory

[13.14.18.66 NMAC - N, 5-15-00; 13.14.18.66 NMAC - Rn, 13.14.18.60 NMAC, 8-1-08; A, 7-31-14]

13.14.18.85 NM FORM 63: SHORT FORM RESIDENTIAL LOAN POLICY:

Short Form Residential Loan Policy - One-to-Four Family
Issued By Blank Title Insurance Company
[NM Form 63; ALTA Form Rev. {2006} 12-03-12]

[Schedule A:

Name and Address of Title Insurance Company:
[File No.:]
Policy No.:
Loan No.:
Address Reference:
Street Address:
County and State:
Amount of Insurance: \$
[Premium: \$]
Mortgage Amount: \$
Mortgage Date:
Date of Policy: [at a.m./p.m.]
Name of Insured:
Name of Borrower(s):

The estate or interest in the Land identified in this Schedule A and which is encumbered by the Insured Mortgage is fee simple and is, at Date of Policy, vested in the borrower(s) shown in the Insured Mortgage and named above.

The Land referred to in this policy is described as set forth in the Insured Mortgage.

This policy consists of [one] page(s), [including its reverse side,] unless an addendum is attached and indicated below:

_____ Addendum attached

The endorsements checked below, if any, are incorporated in this policy:

- ALTA ENDORSEMENT 4-06 (Condominium)
ALTA ENDORSEMENT 4.1-06 (Condominium), if the land or estate or interest is referred to in the insured mortgage as a condominium:
ALTA ENDORSEMENT 5-06 (Planned Unit Development)
ALTA ENDORSEMENT 5.1-06 (Planned Unit Development)
ALTA ENDORSEMENT 6-06 (Variable Rate), if the insured mortgage contains provisions which provide for an adjustable interest rate:
ALTA ENDORSEMENT 6.2-06 (Variable Rate-Negative Amortization), if the insured mortgage contains provisions which provide for both an adjustable interest rate and negative amortization:
ALTA ENDORSEMENT 7-06 (Manufactured Housing), if a manufactured housing unit is located on the land at date of policy:
ALTA ENDORSEMENT 7.1-06 (Manufactured Housing - Conversion; Loan)
ALTA ENDORSEMENT 8.1-06 (Environmental Protection Lien) - Paragraph b refers to the following state statute(s): Sections 3-48-7 and 69-25B-8, New Mexico Statutes Annotated 1978.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

BY:
PRESIDENT

BY:
SECRETARY

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

BY: _____, PRESIDENT

BY: _____, SECRETARY

SUBJECT TO THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B BELOW, AND ANY ADDENDUM ATTACHED HERETO, BLANK TITLE INSURANCE COMPANY, A _____ CORPORATION, HEREIN CALLED THE "COMPANY," HEREBY INSURES THE INSURED IN ACCORDANCE WITH AND SUBJECT TO THE TERMS, EXCLUSIONS AND CONDITIONS SET FORTH IN THE AMERICAN LAND TITLE ASSOCIATION LOAN POLICY (6-17-06), ALL OF WHICH ARE INCORPORATED HEREIN. ALL REFERENCES TO SCHEDULES A AND B SHALL REFER TO SCHEDULES A AND B OF THIS POLICY.

SCHEDULE B – Exceptions from coverage and affirmative insures:

Except to the extent of the affirmative insurance set forth below, this policy does not insure against loss or damage (and the Company will not pay costs, attorney's fees, or expenses) which arise by reason of:

1. Those taxes and special assessments that become due or payable subsequent to Date of Policy. (This does not modify or limit the coverage provided in covered risks 11(b).
2. Covenants, conditions, or restrictions, if any, appearing in the Public Records; however, this policy insures against loss or damage arising from:
 - a. the violation of those covenants, conditions, or restrictions on or prior to Date of Policy;
 - b. a forfeiture or reversion of Title from a future violation of those covenants, conditions, or restrictions, including those relating to environmental protection; and
 - c. provisions in those covenants, conditions, or restrictions including those relating to environmental protection, under which the lien of the Insured Mortgage can be extinguished, subordinated, or impaired.

As used in paragraph 2(a), the words "covenants, conditions, or restrictions" do not refer to or include any covenant, condition, or restriction (a) relating to obligations of any type to perform maintenance, repair or remediation on the Land, or (b) pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances, except to the extent that a notice of a violation or alleged violation affecting the Land has been recorded or filed in the Public Records at Date of Policy and is not referenced in an addendum attached to this policy.

3. Any easements or servitudes appearing in the Public Records; however this policy insures against loss or damage arising from (a) the encroachment, at Date of Policy, of the improvements on any easement, and (b) any interference with or damage to existing improvements, including lawns, shrubbery, and trees, resulting from the use of the easements for the purposes granted or reserved.

4. Any lease, grant, exception, or reservation of minerals or mineral rights appearing in the Public Records; however, this policy insures against loss or damage arising from

(a) any affect on or impairment of the use of the Land for residential one-to-four family dwelling purposes by reason of such lease, grant, exception or reservation of minerals or mineral rights, and

(b) any damage to existing improvements, including lawns, shrubbery, and trees, resulting from the future exercise of any right to use the surface of the Land for the extraction or development of the minerals or mineral rights so leased, granted, excepted, or reserved. Nothing herein shall insure against loss or damage resulting from subsidence.

NOTICES, WHERE SENT: Any notice of claim or other notice or statement in writing required to be given the Company under this policy must be given to the Company at the following address: _____:

SCHEDULE B continued – Addendum to short form residential loan policy

Addendum to Policy Number: _____
 {File Number: _____}

IN ADDITION TO THE MATTERS SET FORTH ON SCHEDULE B OF THE POLICY TO WHICH THIS ADDENDUM IS ATTACHED, THIS POLICY DOES NOT INSURE AGAINST LOSS OR DAMAGE (AND THE COMPANY WILL NOT PAY COSTS, ATTORNEYS' FEES OR EXPENSES) THAT ARISE BY REASON OF THE FOLLOWING:]

American Land Title Association ALTA Short Form Residential Loan Policy, Revised 12-03-12

SCHEDULE A

Name and Address of Title Insurance Company:

[File No.:]

Policy No.:

Loan No.:

Address Reference: Street Address:

County and State:

Amount of Insurance: \$ [Premium: \$]

Mortgage Amount: \$ Mortgage Date:

Date of Policy: [at a.m. / p.m.]

Name of Insured:

Name of Borrower(s):

The estate or interest in the Land identified in this Schedule A and which is encumbered by the Insured Mortgage is fee simple and is, at Date of Policy, vested in the borrower(s) shown in the Insured Mortgage and named above.

The Land referred to in this policy is described as set forth in the Insured Mortgage.

This policy consists of [one] page(s), [including its reverse side,] unless an addendum is attached and indicated below:

Addendum attached

The endorsements checked below, if any, are incorporated in this policy:

- ALTA ENDORSEMENT 4-06 (Condominium)
- ALTA ENDORSEMENT 4.1-06 (Condominium), if the Land or estate or interest is referred to in the Insured Mortgage as a condominium.
- ALTA ENDORSEMENT 5-06 (Planned Unit Development)
- ALTA ENDORSEMENT 5.1-06 (Planned Unit Development)
- ALTA ENDORSEMENT 6-06 (Variable Rate), if the Insured Mortgage contains provisions which provide for an adjustable interest rate.
- ALTA ENDORSEMENT 6.2-06 (Variable Rate-Negative Amortization), if the Insured Mortgage contains provisions which provide for both an adjustable interest rate and negative amortization.
- ALTA ENDORSEMENT 7-06 (Manufactured Housing), if a manufactured housing unit is located on the Land at Date of Policy.
- ALTA ENDORSEMENT 7.1-06 (Manufactured Housing – Conversion; Loan)
- ALTA ENDORSEMENT 8.1-06 (Environmental Protection Lien) – Paragraph b refers to the following state statute(s):

[Witness clause optional]

BY: _____ PRESIDENT

BY: _____ SECRETARY

[bracketed material optional—one alternative must be chosen]

SUBJECT TO THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B BELOW, AND ANY ADDENDUM ATTACHED HERETO, BLANK TITLE INSURANCE COMPANY, A _____ CORPORATION, HEREIN CALLED THE "COMPANY," HEREBY INSURES THE INSURED IN ACCORDANCE WITH AND SUBJECT TO THE TERMS, EXCLUSIONS AND CONDITIONS SET FORTH IN THE AMERICAN LAND TITLE ASSOCIATION LOAN POLICY (6-17-06), ALL OF WHICH ARE INCORPORATED HEREIN. ALL REFERENCES TO SCHEDULES A AND B SHALL REFER TO SCHEDULES A AND B OF THIS POLICY.

SCHEDULE B

EXCEPTIONS FROM COVERAGE AND AFFIRMATIVE INSURANCES

Except to the extent of the affirmative insurance set forth below, this policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) which arise by reason of:

1. _____ Those taxes and assessments that become due or payable subsequent to Date of Policy. (This does not modify or limit the coverage provided in Covered Risk 11(b).)

2. Covenants, conditions, or restrictions, if any, appearing in the Public Records; however, this policy insures against loss or damage arising from:

- (a) the violation of those covenants, conditions, or restrictions on or prior to Date of Policy;
- (b) a forfeiture or reversion of Title from a future violation of those covenants, conditions, or restrictions, including those relating to environmental protection; and
- (c) provisions in those covenants, conditions, or restrictions, including those relating to environmental protection, under which the lien of the Insured Mortgage can be extinguished, subordinated, or impaired.

As used in paragraph 2(a), the words "covenants, conditions, or restrictions" do not refer to or include any covenant, condition, or restriction (a) relating to obligations of any type to perform maintenance, repair or remediation on the Land, or (b) pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances, except to the extent that a notice of a violation or alleged violation affecting the Land has been recorded or filed in the Public Records at Date of Policy and is not referenced in an addendum attached to this policy.

3. Any easements or servitudes appearing in the Public Records; however, this policy insures against loss or damage arising from (a) the encroachment, at Date of Policy, of the improvements on any easement, and (b) any interference with or damage to existing improvements, including lawns, shrubbery, and trees, resulting from the use of the easements for the purposes granted or reserved.

4. Any lease, grant, exception, or reservation of minerals or mineral rights or other subsurface substances appearing in the Public Records; however, this policy insures against loss or damage arising from (a) any effect on or impairment of the use of the Land for residential one-to-four family dwelling purposes by reason of such lease, grant, exception or reservation of minerals or mineral rights or other subsurface substances, and (b) any damage to existing improvements, including lawns, shrubbery, and trees, resulting from the future exercise of any right to use the surface of the Land for the extraction or development of the minerals or mineral rights or other subsurface substances so leased, granted, excepted, or reserved. Nothing herein shall insure against loss or damage resulting from contamination, explosion, fire, fracturing, vibration, earthquake or subsidence.

5. Water rights, claims or title to water.

NOTICES, WHERE SENT: Any notice of claim or other notice or statement in writing required to be given the Company under this policy must be given to the Company at the following address:

ADDENDUM
TO
SHORT FORM RESIDENTIAL LOAN POLICY

Addendum to Policy Number: _____ [File Number: _____]

SCHEDULE B (Continued)

IN ADDITION TO THE MATTERS SET FORTH ON SCHEDULE B OF THE POLICY TO WHICH THIS ADDENDUM IS ATTACHED, THIS POLICY DOES NOT INSURE AGAINST LOSS OR DAMAGE (AND THE COMPANY WILL NOT PAY COSTS, ATTORNEYS' FEES OR EXPENSES) THAT ARISE BY REASON OF THE FOLLOWING: _____.

[13.14.18.85 NMAC - Rn, 13.14.18.76 NMAC & A, 8-1-08; A, 9-15-09; A, 7-31-14]

13.14.18.87 NM FORM 65: ZONING - COMPLETED STRUCTURE ENDORSEMENT:

**[Zoning - Completed Structure Endorsement
Attached to Policy No. _____
Issued By Blank Title Insurance Company
[NM Form 65; ALTA Form 3.1, Rev. 2006]**

1. The Company insures against loss or damage sustained by the Insured in the event that, at Date of Policy;

(a) according to applicable zoning ordinances and amendments, the Land is not classified Zone _____;

(b) the following use or uses are not allowed under that classification:

(c) There shall be no liability under paragraph 1.b. if the use or uses are not allowed as the result of any lack of compliance with any conditions, restrictions, or requirements contained in the zoning ordinances and amendments, including but not limited to the failure to secure necessary consents or authorizations as a prerequisite to the use or uses. This paragraph 1.c. does not modify or limit the coverage provided in Covered Risk 5.

2. The Company further insures against loss or damage sustained by the Insured by reason of a final decree of a court of competent jurisdiction

(a) prohibiting the use of the Land, with any existing structure, as insured in paragraph 1.b.; or

(b) requiring the removal or alteration of the structure on the basis that, at Date of Policy, the zoning ordinances and amendments have been violated with respect to any of the following matters:

- (i) Area, width, or depth of the Land as a building site for the structure;
- (ii) Floor space area of the structure;
- (iii) Setback of the structure from the property lines of the Land;
- (iv) Height of the structure; or
- (v) Number of parking spaces.

3. There shall be no liability under this endorsement based on:

(a) the invalidity of the zoning ordinances and amendments until after a final decree of a court of competent jurisdiction adjudicating the invalidity, the effect of which is to prohibit the use or uses;

(b) the refusal of any person to purchase, lease, or lend money on the estate or interest covered by this policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

~~BLANK TITLE INSURANCE COMPANY~~

Authorized signatory _____]

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

1. The Company insures against loss or damage sustained by the Insured in the event that, at Date of Policy,

- a. _____ according to applicable zoning ordinances and amendments, the Land is not classified Zone _____;
- b. _____ the following use or uses are not allowed under that classification:
- c. _____ There shall be no liability under paragraph 1.b. if the use or uses are not allowed as the result of any lack of compliance with any conditions, restrictions, or requirements contained in the zoning ordinances and amendments, including but not limited to the failure to secure necessary consents or authorizations as a prerequisite to the use or uses. This paragraph 1.c. does not modify or limit the coverage provided in Covered Risk 5.

2. The Company further insures against loss or damage sustained by the Insured by reason of a final decree of a court of competent jurisdiction either prohibiting the use of the Land, with any existing structure, as specified in paragraph 1.b. or requiring the removal or alteration of the structure, because, at Date of Policy, the zoning ordinances and amendments have been violated with respect to any of the following matters:

- a. _____ Area, width, or depth of the Land as a building site for the structure
- b. _____ Floor space area of the structure
- c. _____ Setback of the structure from the property lines of the Land
- d. _____ Height of the structure, or
- e. _____ Number of parking spaces.

3. There shall be no liability under this endorsement based on:

a. _____ the invalidity of the zoning ordinances and amendments until after a final decree of a court of competent jurisdiction adjudicating the invalidity, the effect of which is to prohibit the use or uses;

b. _____ the refusal of any person to purchase, lease or lend money on the Title covered by this policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____

Authorized Signatory

[13.14.18.87 NMAC - Rn, 13.14.18.78 NMAC & A, 8-1-08; A, 7-31-14]

13.14.18.103 NM FORM 81: CLOSING PROTECTION LETTER[:] - SINGLE TRANSACTION:**[Closing Protection Letter – Single Transaction****Issued by****Blank Title Insurance Company****[NM Form 81]**

[Name and Address of Addressee: _____]

Date: _____

Name of Issuing Agent or Approved Attorney (hereafter, "Issuing Agent" or "Approved Attorney", as the case may require):

_____ [Identity of settlement agent and status as either Issuing Agent or Approved Attorney appears here.]

Transaction ("the Real Estate Transaction"):

Re: _____ Closing Protection Letter

Dear _____,

Blank Title Insurance Company (the "Company") in consideration of your acceptance of this letter agrees, subject to the Conditions and Exclusions set forth below, to indemnify you for actual loss of settlement funds incurred by you in connection with the closing of the Real Estate Transaction hereafter conducted by the Issuing Agent or Approved Attorney, provided:

(A) the Company issues or is contractually obligated to issue title insurance for your protection in connection with the closing of the Real Estate Transaction;

(B) you are to be the (i) lender secured by an Insured Mortgage, as defined in the ALTA Loan Policy (6-17-06), its assignee or a warehouse lender, (ii) purchaser of an interest in land, or (iii) lessee of an interest in land; and

(C) the aggregate of all funds you transmit to the Issuing Agent or Approved Attorney for the Real Estate Transaction does not exceed \$ _____, and;

further provided the loss arises out of:

1. _____ Failure of the Issuing Agent or Approved Attorney to comply with your written closing instructions to the extent that they relate to (a) the status of the title to that interest in land or the validity, enforceability and priority of the lien of the mortgage on that interest in land, including the obtaining of documents and the disbursement of funds necessary to establish the status of title or lien, or (b) the obtaining of any other document, specifically required by you, but only to the extent the failure to obtain the other document affects the status of the title to that interest in land or the validity, enforceability and priority of the lien of the mortgage on that interest in land, and not to the extent that your instructions require a determination of the validity, enforceability or the effectiveness of the other document, or
2. _____ Fraud, theft, dishonesty or negligence of the Issuing Agent or Approved Attorney in handling your funds or documents in connection with the closing to the extent that fraud, theft, dishonesty or negligence relates to the status of the title to that interest in land or to the validity, enforceability, and priority of the lien of the mortgage on that interest in land.

If you are a lender protected by this letter, your borrower, your assignee and your warehouse lender in connection with an Insured Mortgage shall be protected as if it was addressed to them.

Conditions and Exclusions

1. _____ The Company shall have no liability for loss arising out of:

_____ A. _____ Failure of the Issuing Agent or Approved Attorney to comply with closing instruction that require title insurance protection inconsistent with that set forth in the Company's title insurance binder or commitment.

_____ B. _____ Loss or impairment of your funds in the course of collection or while on deposit with a bank due to bank failure, insolvency or suspension, except as shall result from failure of the Issuing Agent or Approved Attorney to comply with your written closing instructions to deposit the funds in a bank which you designated by name.

_____ C. _____ Defects, liens, encumbrances or other matters in connection with the Real Estate Transaction. This Exclusion does not affect the coverage afforded in the Company's title insurance policy issued in connection with the Real Estate Transaction.

_____ D. _____ Fraud, theft, dishonesty or negligence of your employee, agent, attorney or broker.

_____ E. _____ Your settlement or release of any claim without the Company's written consent.

_____ F. _____ Any matters created, suffered, assumed or agreed to by you or known to you.

2. If the closing is conducted by an Approved Attorney, a title insurance binder or commitment for the issuance of the Company's title insurance policy must have been received by you prior to the transmission of your final closing instructions to the Approved Attorney.

3. When the Company shall have indemnified you pursuant to this letter, it shall be subrogated to all rights and remedies you have against any person or property had you not been so indemnified. The Company's liability for indemnification shall be reduced to the extent that you have impaired the value of this right of subrogation.

4. The Company's liability for loss under this letter shall not exceed the least of:
(a) the amount of your settlement funds;
(b) the Company's liability under its title insurance policy at the time written notice of a claim is made under this letter; or
(c) the value of the lien of the Insured Mortgage, or the interest in the land insured or to be insured under the Company's title insurance policy at the time written notice of a claim is made under this letter.

5. Payment to you or to the owner of the indebtedness under the Company's title insurance policy or policies or from any other source shall reduce liability under this letter by the same amount. Payment in accordance with the terms of this letter shall constitute a payment pursuant to Section 10 of the Conditions of the policy.

6. The Issuing Agent is the Company's agent only for the limited purpose of issuing title insurance policies. Neither the Issuing Agent nor the Approved Attorney is the Company's agent for the purpose of providing closing or settlement services. The Company's liability for your losses arising from those closing or settlement services is strictly limited to the protection expressly provided in this letter. The Company shall have no liability for loss resulting from the fraud, theft, dishonesty, or negligence of any party to the Real Estate Transaction other than an Issuing Agent or Approved Attorney, the lack of creditworthiness of any borrower connected with the Real Estate Transaction, or the failure of any collateral to adequately secure a loan connected with the Real Estate Transaction.

7. You must promptly send written notice of a claim under this letter to the Company at its principal office at _____. If the Company is prejudiced by your failure to provide prompt notice, the Company's liability to you under this letter shall be reduced to the extent of the prejudice. In no event shall the Company be liable for a loss if the written notice is not received by the Company within one year from the date of the closing.

8. This letter will cover the Real Estate Transaction if it closes within one year after the date of this letter. The Company may terminate its obligation to cover the Real Estate Transaction, if it has not closed, by sending written notice to the Addressee.

9. The protection of this letter extends only to real estate in [State].

10. Either the Company or you may demand that any claim arising under this letter be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association, unless you have a title insurance policy for the Real Estate Transaction with an Amount of Insurance greater than \$2,000,000. If you have a policy of title insurance for the Real Estate Transaction with an Amount of Insurance greater than \$2,000,000, a claim arising under this letter may be submitted to arbitration only when agreed to by both the Company and you.

No previous letter, endorsement or similar agreement for closing protection applies to the Real Estate Transaction.

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

(The words "Underwritten Title Company" maybe inserted in lieu of Issuing Agent)]

American Land Title Association Closing Protection Letter - Single Transaction, Revised 12-1-11

BLANK TITLE INSURANCE COMPANY

Name and address of addressee:
Date:

Name of Issuing Agent or Approved Attorney ("Issuing Agent" or "Approved Attorney", as the case may require):
[Name of Issuing Agent or Approved Attorney appears here.]
Transaction ("Real Estate Transaction"):

Re: Closing Protection Letter

Dear

Blank Title Insurance Company (the "Company"), in consideration of your acceptance of this letter, agrees, subject to the Conditions and Exclusions set forth below, to indemnify you for actual loss of settlement funds incurred by you in connection with the closing of the Real

Estate Transaction conducted by the Issuing Agent or Approved Attorney on or after the date of this letter, provided:

- A.** the Company issues or is contractually obligated to issue title insurance for your protection in connection with the closing of the Real Estate Transaction;
- B.** you are to be the (i) lender secured by an Insured Mortgage, as defined in the ALTA Loan Policy (6-17-06), its assignee or a warehouse lender, (ii) purchaser of an interest in land, or (iii) lessee of an interest in land; and
- C.** the aggregate of all funds you transmit to the Issuing Agent or Approved Attorney for the Real Estate Transaction does not exceed \$ _____; and further provided the loss arises out of:
- 1.** failure of the Issuing Agent or Approved Attorney to comply with your written closing instructions to the extent that they relate to (a) the status of the title to that interest in land or the validity, enforceability and priority of the lien of the mortgage on that interest in land, including the obtaining of documents and the disbursement of funds necessary to establish the status of title or lien, or (b) the obtaining of any other document, specifically required by you, but only to the extent the failure to obtain the other document affects the status of the title to that interest in land or the validity, enforceability and priority of the lien of the mortgage on that interest in land, and not to the extent that your instructions require a determination of the validity, enforceability or the effectiveness of the other document, or
 - 2.** fraud, theft, dishonesty or negligence of the Issuing Agent or Approved Attorney in handling your funds or documents in connection with the closing to the extent that fraud, theft, dishonesty or negligence relates to the status of the title to that interest in land or to the validity, enforceability, and priority of the lien of the mortgage on that interest in land.

If you are a lender protected by this letter, your borrower, your assignee and your warehouse lender in connection with an Insured Mortgage shall be protected as if it was addressed to them.

Conditions and Exclusions:

- 1.** The Company shall have no liability for loss arising out of:
 - a.** failure of the Issuing Agent or Approved Attorney to comply with closing instructions that require title insurance protection inconsistent with that set forth in the Company's title insurance binder or commitment;
 - b.** loss or impairment of your funds in the course of collection or while on deposit with a bank due to bank failure, insolvency or suspension, except as shall result from failure of the Issuing Agent or Approved Attorney to comply with your written closing instructions to deposit the funds in a bank which you designated by name;
 - c.** defects, liens, encumbrances or other matters in connection with the Real Estate Transaction. This Exclusion does not affect the coverage afforded in the Company's title insurance policy issued in connection with the Real Estate Transaction;
 - d.** fraud, theft, dishonesty or negligence of your employee, agent, attorney or broker;
 - e.** your settlement or release of any claim without the Company's written consent; and
 - f.** any matters created, suffered, assumed or agreed to by you or known to you.
- 2.** If the closing is conducted by an Approved Attorney, a title insurance binder or commitment for the issuance of the Company's title insurance policy must have been received by you prior to the transmission of your final closing instructions to the Approved Attorney.
- 3.** When the Company shall have indemnified you pursuant to this letter, it shall be subrogated to all rights and remedies you have against any person or property had you not been indemnified. The Company's liability for indemnification shall be reduced to the extent that you have impaired the value of this right of subrogation.
- 4.** The Company's liability for loss under this letter shall not exceed the least of:
 - a.** the amount of your settlement funds;
 - b.** the Company's liability under its title insurance policy at the time written notice of a claim is made under this letter; or
 - c.** the value of the lien of the Insured Mortgage, or the interest in the land insured or to be insured under the Company's title insurance policy at the time written notice of a claim is made under this letter.
- 5.** Payment to you or to the owner of the Indebtedness under the Company's title insurance policy or policies or from any other source shall reduce liability under this letter by the same amount. Payment in accordance with the terms of this letter shall constitute a payment pursuant to Section 10 of the Conditions of the policy.
- 6.** The Issuing Agent is the Company's agent only for the limited purpose of issuing title insurance policies. Neither the Issuing Agent nor the Approved Attorney is the Company's agent for the purpose of providing closing or settlement services. The Company's liability for your losses arising from those closing or settlement services is strictly limited to the protection expressly provided in this letter. The Company shall have no liability for loss resulting from the fraud, theft, dishonesty or negligence of any party to the Real Estate Transaction other than an Issuing Agent or Approved Attorney, the lack of creditworthiness of any borrower connected with the Real Estate Transaction, or the failure of any collateral to adequately secure a loan connected with the Real Estate Transaction.
- 7.** You must promptly send written notice of a claim under this letter to the Company at its principal office at _____ . If the Company is prejudiced by your failure to provide prompt notice, the Company's liability to you under this letter shall be reduced to the extent of the prejudice. In no event shall the Company be liable for a loss if the written notice is not received by the Company within one year from the date of the closing.
- 8.** This letter will cover the Real Estate Transaction if it closes within one year after the date of this letter. The Company may

terminate its obligation to cover the Real Estate Transaction if it has not closed by sending written notice to the Addressee.

9. The protection of this letter extends only to real estate in [State].

No previous letter, endorsement or similar agreement for closing protection applies to the Real Estate Transaction.

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

(The words "Underwritten Title Company" maybe inserted in lieu of Issuing Agent)
[13.14.18.103 NMAC - N, 9-15-10; A, 10-1-12; A, 7-31-14]

13.14.18.104 NM FORM 81.1: CLOSING PROTECTION LETTER – MULTIPLE TRANSACTIONS:

~~[Closing Protection Letter – Multiple Transactions
Issued by
Blank Title Insurance Company
[NM Form 81.1]~~

[Name and Address of Addressee: _____]

Date: _____

Name of Issuing Agent or Approved Attorney (hereafter, "Issuing Agent" or "Approved Attorney", as the case may require):

_____ [Identity of settlement agent and status as either Issuing Agent or Approved Attorney appears here.]

Re: _____ Closing Protection Letter

Dear _____,

Blank Title Insurance Company (the "Company"), in consideration of your acceptance of this letter, agrees, subject to the Conditions and Exclusions set forth below, to indemnify you for actual loss of settlement funds incurred by you in connection with the closing of any real estate transaction ("Real Estate Transaction") hereafter conducted by the Issuing agent or Approved Attorney, provided:

(A) The Company issues or is contractually obligated to issue title insurance for your protection in connection with the closing of the Real Estate Transaction; and

(B) you are to be the lender secured by an Insured Mortgage, as defined in the ALTA Loan Policy (6-17-06), its assignee or a warehouse lender; and

(C) the aggregate of all funds you transmit to the Issuing Agent or Approved Attorney for any Real Estate Transaction does not exceed \$ _____, and;

further provided the loss arises out of:

1. _____ Failure of the Issuing Agent or Approved Attorney to comply with your written closing instructions to the extent that they relate to (a) the status of the title to that interest in land or the validity, enforceability and priority of the lien of the mortgage on that interest in land, including the obtaining of documents and the disbursement of funds necessary to establish the status of title or lien, or (b) the obtaining of any other document, specifically required by you, but only to the extent the failure to obtain the other document affects the status of the title to that interest in land or the validity, enforceability and priority of the lien of the mortgage on that interest in land, and not to the extent that your instructions require a determination of the validity, enforceability or the effectiveness of the other document, or

2. _____ Fraud, theft, dishonesty or negligence of the Issuing Agent or Approved Attorney in handling your funds or documents in connection with the closings to the extent that fraud, theft, dishonesty or negligence relates to the status of the title to that interest in land or to the validity, enforceability, and priority of the lien of the mortgage on that interest in land.

If you are a lender protected by this letter, your borrower, your assignee and your warehouse lender in connection with an Insured Mortgage shall be protected as if it was addressed to them.

Conditions and Exclusions

1. _____ The Company shall have no liability for loss arising out of:

_____ A. _____ Failure of the Issuing Agent or Approved Attorney to comply with closing instructions that requires title insurance

protection inconsistent with that set forth in the Company's title insurance binder or commitment:

_____ B. _____ Loss or impairment of your funds in the course of collection or while on deposit with a bank due to bank failure, insolvency or suspension, except as shall result from failure of the Issuing Agent or the Approved Attorney to comply with your written closing instructions to deposit the funds in a bank which you designated by name:

_____ C. _____ Defects, liens, encumbrances or other matters in connection with the Real Estate Transaction. This Exclusion does not affect the coverage afforded in the Company's title insurance policy issued in connection with the Real Estate Transaction.

_____ D. _____ Fraud, theft, dishonesty or negligence of your employees, agent, attorney or broker:

_____ E. _____ Your settlement or release of any claim without the Company's written consent:

_____ F. _____ Any matters created, suffered, assumed or agreed to by you or known to you:

2. _____ If the closing is to be conducted by an Approved Attorney, a title insurance binder or commitment for the issuance of the Company's title insurance policy must have been received by you prior to the transmission of your final closing instructions to the Approved Attorney:

3. _____ When the Company shall have indemnified you pursuant to this letter, it shall be subrogated to all rights and remedies you have against any person or property had you not been indemnified. The Company's liability for indemnification shall be reduced to the extent that you have impaired the value of this right of subrogation:

4. _____ The Company's liability for loss under this letter shall not exceed the least of:

_____ (a) _____ the amount of your settlement funds;

_____ (b) _____ the Company's liability under its title insurance policy at the time written notice of a claim is made under this letter; or

_____ (c) _____ the value of the lien of the Insured Mortgage or the interest in the land insured or to be insured under the Company's title insurance policy at the time written notice of a claim is made under this letter.

5. _____ Payment to you or to the owner of the indebtedness under the Company's title insurance policy or policies or from any other source shall reduce liability under this letter by the same amount. Payment in accordance with the terms of this letter shall constitute a payment pursuant to Section 10 of the Conditions of the policy:

6. _____ The Issuing Agent is the Company's agent only for the limited purpose of issuing title insurance policies. Neither the Issuing Agent nor the Approved Attorney is the Company's agent for the purpose of providing closing or settlement services. The Company's liability for your losses arising from those closing or settlement services is strictly limited to the protection expressly provided in this letter. The Company shall have no liability for loss resulting from the fraud, theft, dishonesty or negligence of any party to the Real Estate Transaction other than an Issuing Agent or Approved Attorney, the lack of creditworthiness of any borrower connected with the Real Estate Transaction, or the failure of any collateral to adequately secure a loan connected with the Real Estate Transaction:

7. _____ You must promptly send written notice of a claim under this letter to the Company at its principal office at _____ . If the Company is prejudiced by your failure to provide prompt notice, the Company's liability to you under this letter shall be reduced to the extent of the prejudice. In no event shall the Company be liable for a loss if the written notice is not received by the Company within one year from the date of the closing:

8. _____ This letter will cover each Real Estate Transaction that closes within one year after the date of this letter. The Company may terminate its obligation to cover Real Estate Transactions, that have not closed by sending written notice to the Addressee:

9. _____ The protection of this letter extends only to real estate in [State]:

10. _____ Either the Company or you may demand that any claim arising under this letter be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association, unless you have a title insurance policy for the Real Estate Transaction with an Amount of Insurance greater than \$2,000,000. If you have a policy of title insurance for the Real Estate Transaction with an Amount of Insurance greater than \$2,000,000, a claim arising under this letter may be submitted to arbitration only when agreed to by both the Company and you:

No previous letter, endorsement or similar agreement for closing protection applies to the Real Estate Transactions:

BLANK TITLE INSURANCE COMPANY

By: _____
 _____ Authorized Signatory

(The name of a particular issuing agent or approved attorney may be inserted in lieu of reference to Issuing Agent or Approved Attorney contained in this letter and the words "Underwritten Title Company" may be inserted in lieu of Issuing Agent.)]

BLANK TITLE INSURANCE COMPANY

Name and address of addressee:

Date:

Name of Issuing Agent or Approved Attorney ("Issuing Agent" or "Approved Attorney", as the case may require):

[Name of Issuing Agent or Approved Attorney appears here.]Re: Closing Protection Letter

Dear

Blank Title Insurance Company (the "Company"), in consideration of your acceptance of this letter, agrees, subject to the Conditions and Exclusions set forth below, to indemnify you for actual loss of settlement funds incurred by you in connection with the closing of any real estate transaction ("Real Estate Transaction") conducted by the Issuing Agent or Approved Attorney on or after the date of this letter, provided:

A. the Company issues or is contractually obligated to issue title insurance for your protection in connection with the closing of the Real Estate Transaction;

B. you are to be the lender secured by an Insured Mortgage, as defined in the ALTA Loan Policy (6-17-06), its assignee or a warehouse lender; and

C. the aggregate of all funds you transmit to the Issuing Agent or Approved Attorney for the Real Estate Transaction does not exceed \$ _____; and further provided the loss arises out of:

1. failure of the Issuing Agent or Approved Attorney to comply with your written closing instructions to the extent that they relate to (a) the status of the title to that interest in land or the validity, enforceability and priority of the lien of the mortgage on that interest in land, including the obtaining of documents and the disbursement of funds necessary to establish the status of title or lien, or (b) the obtaining of any other document, specifically required by you, but only to the extent the failure to obtain the other document affects the status of the title to that interest in land or the validity, enforceability and priority of the lien of the mortgage on that interest in land, and not to the extent that your instructions require a determination of the validity, enforceability or the effectiveness of the other document, or

2. fraud, theft, dishonesty or negligence of the Issuing Agent or Approved Attorney in handling your funds or documents in connection with the closings to the extent that fraud, theft, dishonesty or negligence relates to the status of the title to that interest in land or to the validity, enforceability, and priority of the lien of the mortgage on that interest in land.

If you are a lender protected by this letter, your borrower, your assignee and your warehouse lender in connection with an Insured Mortgage shall be protected as if it was addressed to them.

Conditions and Exclusions:

1. The Company shall have no liability for loss arising out of:

a. failure of the Issuing Agent or Approved Attorney to comply with closing instructions that require title insurance protection inconsistent with that set forth in the Company's title insurance binder or commitment;

b. loss or impairment of your funds in the course of collection or while on deposit with a bank due to bank failure, insolvency or suspension, except as shall result from failure of the Issuing Agent or Approved Attorney to comply with your written closing instructions to deposit the funds in a bank which you designated by name;

c. defects, liens, encumbrances or other matters in connection with the Real Estate Transaction. This Exclusion does not affect the coverage afforded in the Company's title insurance policy issued in connection with the Real Estate Transaction.

d. fraud, theft, dishonesty or negligence of your employee, agent, attorney or broker;

e. your settlement or release of any claim without the Company's written consent; and

f. any matters created, suffered, assumed or agreed to by you or known to you.

2. If the closing is to be conducted by an Approved Attorney, a title insurance binder or commitment for the issuance of the Company's title insurance policy must have been received by you prior to the transmission of your final closing instructions to the Approved Attorney.

3. When the Company shall have indemnified you pursuant to this letter, it shall be subrogated to all rights and remedies you have against any person or property had you not been indemnified. The Company's liability for indemnification shall be reduced to the extent that you have impaired the value of this right of subrogation.

4. The Company's liability for loss under this letter shall not exceed the least of:

a. the amount of your settlement funds;

b. the Company's liability under its title insurance policy at the time written notice of a claim is made under this letter; or

c. the value of the lien of the Insured Mortgage or the interest in the land insured or to be insured under the Company's title insurance policy at the time written notice of a claim is made under this letter.

5. Payment to you or to the owner of the Indebtedness under the Company's title insurance policy or policies or from any other source shall reduce liability under this letter by the same amount. Payment in accordance with the terms of this letter shall constitute a payment pursuant to Section 10 of the Conditions of the policy.
6. The Issuing Agent is the Company's agent only for the limited purpose of issuing title insurance policies. Neither the Issuing Agent nor the Approved Attorney is the Company's agent for the purpose of providing closing or settlement services. The Company's liability for your losses arising from those closing or settlement services is strictly limited to the protection expressly provided in this letter. The Company shall have no liability for loss resulting from the fraud, theft, dishonesty or negligence of any party to the Real Estate Transaction other than an Issuing Agent or Approved Attorney, the lack of creditworthiness of any borrower connected with the Real Estate Transaction or the failure of any collateral to adequately secure a loan connected with the Real Estate Transaction.
7. You must promptly send written notice of a claim under this letter to the Company at its principal office at _____ . If the Company is prejudiced by your failure to provide prompt notice, the Company's liability to you under this letter shall be reduced to the extent of the prejudice. In no event shall the Company be liable for a loss if the written notice is not received by the Company within one year from the date of the closing.
8. This letter will cover each Real Estate Transaction that closes within one year after the date of this letter. The Company may terminate its obligation to cover Real Estate Transactions that have not closed by sending written notice to the Addressee.
9. The protection of this letter extends only to real estate in [State].

No previous letter, endorsement or similar agreement for closing protection applies to the Real Estate Transaction.

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

(The name of a particular issuing agent or approved attorney may be inserted in lieu of reference to Issuing Agent or Approved Attorney contained in this letter and the words "Underwritten Title Company" may be inserted in lieu of Issuing Agent.)
[13.14.18.104 NMAC - N, 09-15-10; A, 10-1-12; A, 7-31-14]

13.14.18.107 NM FORM 83: CONSTRUCTION LOAN - ~~[LOSS OF PRIORITY]~~ ENDORSEMENT:

Construction Loan - ~~[Loss of Priority]~~ Endorsement

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

[NM Form 83; ALTA Form ~~[32, Rev. 2006]~~ 32.0-06, Rev. 2-3-11]

1. Covered Risk 11(a) of this policy is deleted.
2. The insurance [for Construction Loan Advances] added by Section 3 of this endorsement is subject to the exclusions in Section 4 of this endorsement and the Exclusions from Coverage in the Policy, the provisions of the Conditions, and the exceptions contained in Schedule B. For the purposes of this endorsement and each subsequent Disbursement Endorsement:
 - a. "Date of Coverage" is [_____] [Date of Policy] unless the Company sets a different Date of Coverage by an ALTA 33-06 Disbursement Endorsement issued at the discretion of the Company.
 - b. "Construction Loan Advance" shall mean an advance that constitutes Indebtedness made on or before Date of Coverage for the purpose of financing in whole or in part the construction of improvements on the Land.
 - c. "Mechanic's Lien" shall mean any statutory lien or claim of lien, affecting the Title, that arises from services provided, labor performed, or materials or equipment furnished.
3. The Company insures against loss or damage[s] sustained by the Insured by reason of:
 - a. The invalidity or unenforceability of the lien of the Insured Mortgage as security for each Construction Loan Advance made on or before the Date of Coverage;
 - b. The lack of priority of the lien of the Insured Mortgage as security for each Construction Loan Advance made on or before the Date of Coverage, over any lien or encumbrance on the Title recorded in the Public Records and not shown in Schedule B; and
 - c. The lack of priority of the lien of the Insured Mortgage, as security for each Construction Loan Advance made on or before the Date of Coverage over any Mechanic's Lien, if notice of the Mechanic's Lien is not filed or recorded in the Public Records, but only to the extent that the charges for the services, labor, materials or equipment for which the Mechanic's Lien is claimed were designated for payment in the documents supporting a Construction Loan Advance disbursed by or on behalf of the Insured on or before Date of Coverage.
4. This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) by reason of any Mechanic's Lien arising from services, labor, material[s] or equipment:
 - a. furnished after Date of Coverage; or
 - b. not designated for payment in the documents supporting a Construction Loan Advance disbursed by or on behalf of the Insured on or before Date of Coverage.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of this policy and of any prior endorsements.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____

Authorized Signatory

[13.14.18.107 NMAC - N, 10-1-12; A, 7-31-14]

13.14.18.108 NM FORM 83.1: CONSTRUCTION LOAN - ~~LOSS OF PRIORITY~~ DIRECT PAYMENT ENDORSEMENT:

Construction Loan - ~~Loss of Priority~~ Direct Payment Endorsement ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

[NM Form 83.1; ALTA Form ~~32.1 Rev. 2006~~ 32.1-06, Rev. 04-2-13]

1. Covered Risk 11(a) of this policy is deleted.
2. The insurance [for Construction Loan Advances] added by Section 3 of this endorsement is subject to the exclusions in Section 4 of this endorsement and the Exclusions from Coverage in the Policy, the provisions of the Conditions, and the exceptions contained in Schedule B. For the purposes of this endorsement and each subsequent Disbursement Endorsement:
 - a. "Date of Coverage", is [_____] [Date of Policy] unless the Company sets a different Date of Coverage by an ALTA 33-06 Disbursement Endorsement issued at the discretion of the Company.
 - b. "Construction Loan Advance," shall mean an advance that constitutes Indebtedness made on or before Date of Coverage for the purpose of financing in whole or in part the construction of improvements on the Land.
 - c. "Mechanic's Lien," shall mean any statutory lien or claim of lien, affecting the Title, that arises from services provided, labor performed, or materials or equipment furnished.
3. The Company insures against loss or damage sustained by the Insured by reason of:
 - a. The invalidity or unenforceability of the lien of the Insured Mortgage as security for each Construction Loan Advance made on or before the Date of Coverage;
 - b. The lack of priority of the lien of the Insured Mortgage as security for each Construction Loan Advance made on or before the Date of Coverage, over any lien or encumbrance on the Title recorded in the Public Records and not shown in Schedule B; and
 - c. The lack of priority of the lien of the Insured Mortgage as security for each Construction Loan Advance made on or before the Date of Coverage over any Mechanic's Lien if notice of the Mechanic's Lien is not filed or recorded in the Public Records, but only to the extent that direct payment to the Mechanic's Lien claimant for the charges for the services, labor, materials or equipment for which the Mechanic's Lien is claimed has been made by the Company or by the Insured with the Company's written approval.
4. This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) by reason of any Mechanic's Lien arising from services, labor, material or equipment:
 - a. furnished after Date of Coverage; or
 - b. to the extent that the Mechanic's Lien claimant was not directly paid by the Company or by the Insured with the Company's written approval.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provision of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____

Authorized Signatory

[13.14.18.108 NMAC - N, 10-1-12; A, 7-31-14]

13.14.18.109 NM FORM 83.2: CONSTRUCTION LOAN - INSURED'S DIRECT PAYMENT ENDORSEMENT:

Construction Loan - Insured Direct Payment Endorsement

ENDORSEMENT

Attached to Policy No. _____

Issued by
BLANK TITLE INSURANCE COMPANY
[NM Form 83.1; ALTA Form 32.2-06, Rev. 04-2-13]

- 1. Covered Risk 11(a) of this policy is deleted.
- 2. The insurance [for Construction Loan Advances] added by Section 3 of this endorsement is subject to the exclusions in Section 4 of this endorsement and the Exclusions from Coverage in the policy, the provisions of the conditions, and the exceptions contained in Schedule B. For the purposes of this endorsement and each subsequent disbursement endorsement:
 - a. "Date of Coverage" is [] [date of policy] unless the company sets a different date of coverage by an ALTA 33-06 disbursement endorsement issued at the discretion of the company;
 - b. "Construction Loan Advance" shall mean an advance that constitutes indebtedness made on or before date of coverage for the purpose of financing in whole or in part the construction of improvements on the land; and
 - c. "Mechanic's Lien" shall mean any statutory lien or claim of lien, affecting the title, that arises from services provided, labor performed, or materials or equipment furnished.
- 3. The company insures against loss or damage sustained by the insured by reason of:
 - a. the invalidity or unenforceability of the lien of the insured mortgage as security for each construction loan advance made on or before the date of coverage;
 - b. the lack of priority of the lien of the insured mortgage as security for each construction loan advance made on or before the date of coverage, over any lien or encumbrance on the title recorded in the public records and not shown in Schedule B; and
 - c. the lack of priority of the lien of the insured mortgage, as security for each construction loan advance made on or before the date of coverage over any mechanic's lien, if notice of the mechanic's lien is not filed or recorded in the public records, but only to the extent that direct payment to the mechanic's lien claimant for the charges for the services, labor, materials or equipment for which the mechanic's lien is claimed has been made by the insured or on the insured's behalf on or before date of coverage.
- 4. This policy does not insure against loss or damage (and the company will not pay costs, attorneys' fees or expenses) by reason of any mechanic's lien arising from services, labor, materials or equipment:
 - a. furnished after date of coverage; or
 - b. to the extent that the mechanic's lien claimant was not directly paid by the insured or on the insured's behalf.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy; (ii) modify any prior endorsements; (iii) extend the date of policy; or (iv) increase the amount of insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized signatory
[13.14.18.109 NMAC - N, 10-1-12; Rp, A, 7-31-14]

~~[13.14.18.109]~~ **13.14.18.110 NM FORM 84: DISBURSEMENT ENDORSEMENT:**

Disbursement Endorsement

ENDORSEMENT

Attached to Policy No. _____

Issued by
BLANK TITLE INSURANCE COMPANY
[NM Form 84; ALTA Form 33, Rev. 2006]

- 1. The Date of Coverage is amended to _____.
[a. The current disbursement is \$ _____.]
[b. The aggregate amount, including the current disbursement, recognized by the Company as disbursed by the Insured is: \$ _____.]
- 2. Schedule A is amended as follows:
- 3. Schedule B is amended as follows:

[Part I]

[Part II]

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____

[13.14.18.109 NMAC - N, 10-1-12; 13.14.18.109 NMAC - Rn, 13.14.18.110, 7-31-14]

~~[13.14.18.110]~~ 13.14.18.111 **NM FORM 85: IDENTIFIED RISK ENDORSEMENT:**

Identified Risk Endorsement

Attached to Policy No. _____

Issued By

BLANK TITLE INSURANCE COMPANY

[NM Form 85]

1. As used in this endorsement "Identified Risk" means: [insert description of the title defect, restriction encumbrance or other matter] described in Exception _____ of Schedule B;
2. The Company insures against loss or damage sustained by the Insured by reason of
 - a. A final order or decree enforcing the Identified Risk in favor of an adverse party; or
 - b. The release of a prospective purchaser or lessee of the Title or lender on the Title from the obligation to purchase, lease, or lend as a result of the Identified Risk, but only if
 - i. there is a contractual condition requiring the delivery of marketable title, and
 - ii. neither the Company nor any other title insurance company is willing to insure over the Identified Risk with the same conditions as in this endorsement
3. The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of the Title by reason of the Identified Risk insured against by Paragraph 2 of this endorsement, but only to the extent provided in the Conditions.
4. This endorsement does not obligate the Company to establish the Title free of the Identified Risk or to remove the Identified Risk, but if the Company does establish the Title free of the identified Risk or removes it, Section 9(a) of the Conditions applies.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____

Authorized Signatory

[13.14.18.110 NMAC - N, 10-1-12; 13.14.18.110 NMAC - Rn, 13.14.18.111 NMAC, 7-31-14]

13.14.18.112 **NM FORM 86: POLICY AUTHENTICATION ENDORSEMENT:**

American Land Title Association Endorsement 39-06 (Policy Authentication) Adopted 04-02-13

POLICY AUTHENTICATION ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

[NM Form 86 ALTA 2006-39-06]

When the policy is issued by the Company with a policy number and Date of Policy, the Company will not deny liability under the policy or any endorsements issued with the policy solely on the grounds that the policy or endorsements were issued electronically or lack signatures in accordance with the Conditions.

This endorsement is issued as part of the policy, except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____

Authorized Signatory
[13.14.18.112 NMAC - N, 7-31-14]

13.14.18.113 NM FORM 65:1 ZONING – LAND UNDER DEVELOPMENT ENDORSEMENT:

American Land Title Association Endorsement 3.2-06 (Zoning – Land Under Development) Revised 04-02-12

ENDORSEMENT

Attached to Policy No. _____

Issued by

BLANK TITLE INSURANCE COMPANY

1. For purposes of this endorsement:

a. “Improvement” means a building, structure, road, walkway, driveway, curb, subsurface utility or water well existing at Date of Policy or to be built or constructed according to the Plans that is or will be located on the Land, but excluding crops, landscaping, lawns, shrubbery, or trees; and

b. “Plans” means those site and elevation plans made by [name of architect or engineer] dated _____, last revised _____, designated as [name of project] consisting of _____ sheets.

2. The Company insures against loss or damage sustained by the Insured in the event that, at Date of Policy:

a. according to applicable zoning ordinances and amendments, the Land is not classified Zone _____;

b. the following use or uses are not allowed under that classification:

c. There shall be no liability under paragraph 2.b. if the use or uses are not allowed as the result of any lack of compliance with any condition, restriction, or requirement contained in the zoning ordinances and amendments, including but not limited to the failure to secure necessary consents or authorizations as a prerequisite to the use or uses. This paragraph 2.c. does not modify or limit the coverage provided in Covered Risk 5.

3. The Company further insures against loss or damage sustained by the Insured by reason of a final decree of a court of competent jurisdiction either prohibiting the use of the Land, with any existing Improvement, as specified in paragraph 2.b. or requiring the removal or alteration of the Improvement, because of a violation of the zoning ordinances and amendments in effect at Date of Policy with respect to any of the following matters:

a. area, width, or depth of the Land as a building site for the Improvement;

b. floor space area of the Improvement;

c. setback of the Improvement from the property lines of the Land;

d. height of the Improvement, or

e. number of parking spaces.

4. There shall be no liability under this endorsement based on:

a. the invalidity of the zoning ordinances and amendments until after a final decree of a court of competent jurisdiction adjudicating the invalidity, the effect of which is to prohibit the use or uses; and

b. the refusal of any person to purchase, lease or lend money on the Title covered by this policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____

Authorized Signatory
[13.14.18.113 NMAC - N, 7-31-14]

End of Adopted Rules Section

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Other Material Related to Administrative Law

NEW MEXICO HUMAN SERVICES DEPARTMENT LOW INCOME HOME ENERGY ASSISTANCE PROGRAM

NOTICE OF PUBLIC HEARING

The Human Services Department will receive public comment for the New Mexico State Plan for Low Income Home Energy Assistance Program (LIHEAP) and file the Plan with the Federal Department of Health and Human Services, Administration for Children and Families (ACF). The hearing will be held at 9:00 am on August 29, 2014. The hearing will be held at the Income Support Division conference room, 2009 S. Pacheco St., Santa Fe, NM. The conference room is located in Room 120 on the lower level.

The Department proposes the New Mexico LIHEAP State Plan covering the period of October 1, 2014 to September 30, 2015. The 30-day comment period will begin July 31, 2014 and end at 4:00 P.M. on August 29, 2014. All comments received during the comment period will receive consideration for the New Mexico LIHEAP State Plan.

The proposed LIHEAP State Plan is available on the Human Services Department website at: <http://www.hsd.state.nm.us/isd/ISDRegisters.html>. Individuals wishing to testify or requesting a copy of the proposed State Plan should contact the Income Support Division, P.O. Box 2348, Pollon Plaza, Santa Fe, New Mexico, 87505-2348, or by calling 505-827-7258.

If you are a person with a disability and you require this information in an alternative format, or you require a special accommodation to participate in any HSD public hearing, program, or service, please contact the New Mexico Human Services Department toll free at 1-800-432-6217, in Santa Fe at 827-9454, or through the New Mexico Relay system, toll free at 1-800-659-8331. The Department requests at least a 10-day advance notice to provide requested alternative formats and special accommodations.

Individuals who do not wish to attend the hearing may submit written or recorded comments. Written or recorded comments must be received by 4:00 pm on August 29, 2014. Please send comments to:

JoAnn Lapington
Human Services Department
P.O. Box 2348 Pollon Plaza
Santa Fe, NM 87504-2348

Interested persons may also address comments via electronic mail to: JoAnn.Lapington@state.nm.us/.

NEW MEXICO WATER QUALITY CONTROL COMMISSION

Notice of Scheduling Order and Procedural Order for the Triennial Review of Surface Water Quality Standards by the Water Quality Control Commission

The Hearing Officer appointed by the Water Quality Control Commission in the matter of the Triennial Review of Standards for Interstate and Intrastate Surface Waters, 20.6.4 NMAC, docketed as WQCC 14-05, has issued a Scheduling Order and Procedural Order. They are available on the web at www.nmenv.state.nm.us/swqb/Standards/TR2013; they can also be requested and obtained by mail, e-mail or facsimile transmission from the following:

Pam Castaneda, WQCC Administrator
New Mexico Environment Department
1190 St. Francis Drive, P.O. Box 5469
Santa Fe, New Mexico 87502
Tele: (505) 827-2425
Fax: (505) 827-2836
E-mail: pam.castaneda@state.nm.us

Aviso de Programación de Orden y Orden de Procedimiento para la revisión trienal de los Estándares de Calidad de Agua Superficial por la Comisión de Control de Calidad de Agua

El Oficial de Audiencias nombrado por la Comisión de Control de Calidad de Agua en la materia de la revisión trienal de Estándares de Aguas Superficiales interestatal y intraestatal, 20.6.4 NMAC, protocolizado como WQCC 14-05, ha emitido una Orden de Programación y Orden de Procedimiento. Se encuentran disponibles en la web en www.nmenv.state.nm.us/swqb/normas/TR2013; también pueden ser solicitados y obtenidos por correo, correo electrónico o transmisión de facsímil de la siguiente:

Pam Castaneda, WQCC Administrator
New Mexico Environment Department
1190 St. Francis Drive, P.O. Box 5469
Santa Fe, New Mexico 87502
Tele: (505) 827-2425
Fax: (505) 827-2836
E-mail: pam.castaneda@state.nm.us

End of Other Related Material Section

Submittal Deadlines and Publication Dates

Volume XXV, Issues 1-24

2014

Volume XXV	Submittal Deadline	Publication Date
Issue Number 1	January 2	January 15
Issue Number 2	January 16	January 31
Issue Number 3	February 3	February 14
Issue Number 4	February 17	February 28
Issue Number 5	March 3	March 14
Issue Number 6	March 17	March 31
Issue Number 7	April 1	April 15
Issue Number 8	April 16	April 30
Issue Number 9	May 1	May 15
Issue Number 10	May 16	May 30
Issue Number 11	June 2	June 13
Issue Number 12	June 16	June 30
Issue Number 13	July 1	July 15
Issue Number 14	July 16	July 31
Issue Number 15	August 1	August 15
Issue Number 16	August 18	August 29
Issue Number 17	September 2	September 15
Issue Number 18	September 16	September 30
Issue Number 19	October 1	October 15
Issue Number 20	October 16	October 30
Issue Number 21	October 31	November 13
Issue Number 22	November 14	November 26
Issue Number 23	December 1	December 15
Issue Number 24	December 16	December 30

The *New Mexico Register* is the official publication for all notices of rulemaking, proposed rules, adopted rules, emergency rules, and other material related to administrative law. The Commission of Public Records, Administrative Law Division, publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978.

The New Mexico Register is available free online at <http://www.nmcpr.state.nm.us/nmregister>.

For further information, call (505) 476-7907.