

New Mexico Register

The official publication for all official notices of rulemaking
and filing of proposed, adopted and emergency rules.

Volume XXXV - Issue 3 - February 13, 2024

COPYRIGHT © 2024
BY
THE STATE OF NEW MEXICO

ALL RIGHTS RESERVED

The New Mexico Register

Published by the Commission of Public Records,
Administrative Law Division

1205 Camino Carlos Rey, Santa Fe, NM 87507

The *New Mexico Register* is published twice each month by the Commission of Public Records, Administrative Law Division. The cost of an annual subscription is \$270.00. Individual copies of any Register issue may be purchased for \$12.00. Subscription inquiries should be directed to: The Commission of Public Records, Administrative Law Division, 1205 Camino Carlos

Rey, Santa Fe, NM 87507.

Telephone: (505) 476-7941; Fax: (505) 476-7910; E-mail: staterules@state.nm.us.

The *New Mexico Register* is available free at <http://www.srca.nm.gov/new-mexico-register/>

New Mexico Register

Volume XXXV, Issue 3

February 13, 2024

Table of Contents

Notices of Rulemaking and Proposed Rules

AUDITOR, OFFICE OF THE STATE

Notice of Proposed Rulemaking and Public Hearing.....94

REGULATION AND LICENSING DEPARTMENT

HOME INSPECTOR BOARD

Notice of Public Rule Hearing and Board Meeting.....126

Adopted Rules

A = Amended, E = Emergency, N = New, R = Repealed, Rn = Renumbered

PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

2.80.200 NMAC A Organization and Operation of the Public Employees
Retirement Board.....142

SUPERINTENDENT OF INSURANCE, OFFICE OF

13.14.5 NMAC A/E Commitments.....145
13.14.7 NMAC A/E Loan, Leasehold Loan, and Construction Loan Policies.....146
13.14.17 NMAC A/E Insurer's Statistical Report.....147
13.14.18 NMAC A/E Forms.....148

This Page Intentionally Left Blank

Notices of Rulemaking and Proposed Rules

AUDITOR, OFFICE OF THE STATE

NOTICE OF PROPOSED RULEMAKING AND PUBLIC HEARING

The Office of the State Auditor is in the process of amending 2.2.2 NMAC, Requirements for Contracting and Conducting Audits of Agencies (“Audit Rule”). The Audit Rule establishes policies, procedures, rules, and requirements for contracting and conducting financial audits, special audits, attestation engagements, performance audits, and forensic engagements of governmental agencies and local public bodies of the state of New Mexico and is governed by Sections 12-6-1 to 12-6-14 NMSA 1978 (“Audit Act”). The amendments to the Audit Rule are proposed pursuant to the Audit Act, at Section 12-6-12 NMSA 1978, which states “[t]he state auditor shall promulgate reasonable regulations necessary to carry out the duties of his office, including regulations required for conducting audits in accordance with generally accepted auditing standards.”

A copy of the full text of the proposed amendments to the Audit Rule is available on the Office of the State Auditor’s website, at <https://www.saonm.org/auditing/financial-audits/state-auditor-rule>.

The Office of the State Auditor will consider adopting the proposed new Audit Rule at a public hearing on March 14, 2023, at 9 a.m. at the New Mexico Society of Certified Professional Accountants at 3400 Menaul Blvd. NE, Albuquerque, NM 87107. The hearing will be a hybrid-virtual meeting and members of the public may attend, listen, and participate via live streaming or telephone as well as by attending in person. Please see the prior link for additional information on attending the virtual public hearing. Public comment is allowed prior to and

at the public hearing on March 14, 2023. Please e-mail written comments on the proposed Audit Rule to Christopher Hall, at christopher.hall@osa.nm.gov between February 13, 2024, through March 14, 2023. If you are unable to e-mail comments, you may deliver written comments to the Office of the State Auditor, 2540 Camino Edward Ortiz, Suite A, Santa Fe, New Mexico 87507, as soon as possible and no later than March 14, 2024. All written comments will be posted on the Office of the State Auditor’s website within three days of receipt.

Proposed amendments to the Audit Rule include the following: (i) amending the rule’s scope and objective; (ii) updating, adding, removing, or clarifying certain definitions; (iii) clarifying peer review requirements for certain audit firms; (iii) amends and shortens the auditor rotation rule from eight years to six; (iv) amends the auditor subcontractor requirements; (v) amends the audit report due date for the Department of Homeland Security and Emergency Management; (vi) adds the New Mexico Opioid Allocation Agreement to the state law compliance audit requirements; (vii) amends the reporting requirements for possible violations of criminal statutes in connection with financial affairs; (viii) adds SOC audit definitions and qualification; (ix) changes a “shall” to a “may” at Subsection C of 2.2.2.8 NMAC; and (x) updates and clarifies rules for agency-initiated special audits and special investigations confidentiality requirements. To the extent applicable, the full text for relevant technical information that served as a basis for proposed changes is available at gasb.org, and gao.gov.

If you are an individual with a disability who is in need of auxiliary aid or service to attend or participate in the public hearing, please contact the Office of the State Auditor at least one week prior to the public hearing.

Please contact Christopher Hall at 505-476-3800 or Christopher.Hall@osa.state.nm.us if any such assistance is needed.

At the start of the meeting, the Office of the State Auditor shall announce the names of those members of the public body participating remotely. All members of the Office of the State Auditor participating remotely shall identify themselves whenever they speak and be clearly audible to the other members of the public body and to the public. The Office of the State Auditor shall suspend discussion if the audio or video is interrupted until restored.

2.2.2.2 SCOPE: All agencies [~~Agencies~~] and local public bodies as defined by the Audit Act and designated independent public accountants, including auditors of the OSA, [~~interested in contracting to perform~~] performing professional services related to the examination of financial affairs and transactions of those agencies and local public bodies.

[2.2.2.2 NMAC - Rp, 2.2.2.2 NMAC, 3/28/2023; A, xx/xx/2024]

2.2.2.3 STATUTORY AUTHORITY: Audit Act, [~~Sections 12-6-1 to 12-6-14~~] Section 12-6-12 NMSA 1978.
[2.2.2.3 NMAC - Rp, 2.2.2.3 NMAC, 3/28/2023]

2.2.2.6 OBJECTIVE: The objective is to establish [~~policies, procedures, rules, and requirements~~] regulations for all agencies and local public bodies, as well as the New Mexico state auditor’s designated independent public accountants, including auditors of the OSA, performing [~~contracting and conducting~~] financial audits, special audits, attestation engagements, performance audits, and forensic accounting engagements [~~of or~~] for the examination of the financial affairs of all governmental agencies and local public bodies of the state of New Mexico.

[2.2.2.6 NMAC - Rp, 2.2.2.6 NMAC, 3/28/2023; A, xx/xx/2024]

2.2.2.7 DEFINITIONS:

In addition to the definitions in the Audit Act, Section 12-6-2 NMSA 1978, the following definitions will apply to all financial examinations performed under this rule: [This section describes certain terms used in 2.2.2 NMAC. When terminology differs from that used at a particular organization or under particular standards, auditors should use professional judgment to determine if there is an equivalent term:]

A. Definitions

beginning with the letter "A":

(1) "AAG

GAS" means AICPA Audit and Accounting Guide - Government auditing standards and Single Audits (latest edition).

(2) "AAG

SLV" means AICPA Audit and Accounting Guide - State and Local Governments (latest edition).

(3) "Abuse"

includes, but is not limited to, behavior that is deficient or improper when compared with behavior that a prudent person would consider reasonable and necessary business practice given the facts and circumstances but excludes fraud and noncompliance with provisions of laws, regulations, contracts, and grant agreements. Abuse also includes misuse of authority or position for personal interests or for the benefit of another or those of an immediate or close family member or business associate. [(GAGAS latest revision.) Abuse does not necessarily involve fraud or illegal acts. However, abuse may be an indication of potential fraud or illegal acts and may still impact the achievement of defined objectives. (GAO-14-704G federal internal control standards paragraph 8.03:)]

(4) "ACFR"

means the state of New Mexico's annual comprehensive financial report.

(5) "[Attest]

Attestation engagement" means an engagement to issue, or where an

IPA issues, an examination, a review, AUP report, or report on subject matter, or an assertion about subject matter that is the responsibility of an agency or local public body, including engagements performed pursuant to AICPA and GAGAS attestation standards and all engagements pursuant to Subsection A of Section 12-6-3 NMSA 1978.

(6) "Audit"

[may refer to or include annual financial and compliance audit, or attestation engagement, unless otherwise specified] means an examination of the financial affairs or performance of an agency or local public body pursuant to the authority of the Audit Act, Section 12-6-1, *et seq.*, NMSA 1978.

(7) "Audit

documentation" means the record of procedures performed, relevant evidence obtained, and conclusions reached (terms such as working papers or workpapers are also sometimes used).

(8) "Auditor"

means designated independent public [accountant] accountants, including auditors of the OSA performing audit or [attest] attestation work as defined in the Audit Act and the Public Accountancy Act.

(9) "AICPA"

means American institute of certified public accountants.

(10) "AU-C"

means U.S. auditing standards-AICPA (Clarified).

(11) "AUP"

means agreed upon procedures.

B. Definitions

beginning with the letter "B":

[RESERVED]

C. Definitions

beginning with the letter "C":

"Component Unit" means a legally separate entity required to be reported in the financial statements of an agency or LPB due to the entity's close financial relationship with the primary agency or LPB.

(1) "CPA"

means certified public accountant.

(2) "CPE"

means continuing professional education.

(3) "CUSIP"

means committee for uniform securities identification procedures, the unique identification number assigned to all stocks and registered bonds in the United States and Canada by the committee on uniform securities identification procedures.

(4) "CYFD"

means the New Mexico children youth and families department.]

D. Definitions

beginning with the letter "D":

(1) "DFA"

means the New Mexico department of finance and administration.

(2) "DOH"

means the New Mexico department of health.

(3) "DOT"

means the New Mexico department of transportation.

(4) "DWS"

means New Mexico Department of Workforce Solutions.]

E. Definitions

beginning with the letter "E":

(1)

"ECECD" means the New Mexico early childhood education and care department.

(2) "ERB"

means the New Mexico education retirement board.

F. Definitions

beginning with the letter "F":

(1) "FCD"

means financial control division of [the department of finance and administration] DFA.

(2) ["FDIC"

means federal deposit insurance corporation.

(3) "FDS"

means financial data schedule.

(4) (3) "Fraud"

means obtaining something of value through willful misrepresentations. This includes, but is not limited to, fraudulent financial reporting, misappropriation of assets, corruption, and use of public funds for activities prohibited by the constitution or laws of the state of New Mexico. Fraudulent financial reporting means intentional misstatements or omissions of amounts or disclosures in the financial statements to deceive

financial statement users, which may include intentional alteration of accounting records, misrepresentation of transactions, or intentional misapplication of accounting principles. Misappropriation of assets means theft of an agency's or LPB's assets, including theft of property, embezzlement of receipts, or fraudulent payments. Corruption means bribery and other illegal acts. [(GAO-14-704G federal internal control standards paragraph 8.02).]

G. Definitions

beginning with the letter "G":

(1) "GAAP"

means generally accepted accounting principles [generally] that are accepted in the United States of America.

(2) "GAAS"

means generally accepted auditing standards, which are systematic guidelines used by auditors when conducting audits of an entity's financial records in the United States of America.

(2) (3) "GAGAS"

means generally accepted government auditing standards, or the most recent revision of [government auditing standards] the yellow book issued by the comptroller general of the United States [yellow book].

(3) "GAO"

means the government accountability office, a division of the OSA.

(4) "GASB"

means governmental accounting standards board.

(5) "GAAS"

means auditing standards generally accepted in the United States of America.

(6) (5) "GSD"

means the New Mexico general services department.

(7) "GRT"

means gross receipts tax.

H. Definitions

beginning with the letter "H":

(1) "HED"

means the New Mexico higher education department.

(2) "HSD"

means the New Mexico human services department.

(3) "HUD"

means the United States [(US)] department of housing and urban development.

I. Definitions

beginning with the letter "I":

(1) "IPA"

means the independent public accountant performing professional services for agencies and local public bodies.

(2) "IRC"

means internal revenue code.

"Independence" means both:

(a)

independence of mind: The state of mind that permits the conduct of an engagement without being affected by influences that compromise professional judgment, thereby allowing an individual to act with integrity and exercise objectivity and professional skepticism; and

(b)

independence in appearance: The absence of circumstances that would cause a reasonable and informed third party to reasonably conclude that the integrity, objectivity, or professional skepticism of an audit organization or member of the engagement team had been compromised.

(2) "IPA"

means an independent public accountant designated by the state auditor to perform financial audits, special audits, attestation engagements, performance audits, and forensic accounting engagements for the examination of the financial affairs of agencies and local public bodies.

J. Definitions

beginning with the letter "J":

[RESERVED]

K. Definitions

beginning with the letter "K":

[RESERVED]

L. Definitions beginning with the letter "L":

(1) "LGD"

means the local government division of [the department of finance and administration (DFA)] DFA.

(2) "LPB"

means local public body as defined in the Audit Act, Section 12-6-2 NMSA 1978.

M. Definitions

beginning with the letter "M":

[RESERVED]

N. Definitions

beginning with the letter "N":

(1)

"NCUSH" means national credit union shares insurance fund.

(2) "NMAC"

means New Mexico administrative code.

(3) "NMCD"

means the New Mexico corrections department.

(4) "NMSA"

means New Mexico statutes annotated.

(5) "Non-

attest engagement" means any engagement that is not an attest engagement, including, but not limited to, services performed in accordance with the statement on standards for consulting services or the statement on standards for forensic services, or any other engagement that is not under Section 12-6-3 NMSA 1978, including certain agency-initiated or other engagements in which the IPA's role is to perform an engagement, assist the client or testify as an expert witness in accounting, auditing, taxation, or other matters, given certain stipulated facts.

(1) "NMAC"

means New Mexico administrative code.

(2) "NMSA"

means New Mexico statutes annotated.

(3) "Non-

attestation engagement" means any engagement that is not an attestation [attest] engagement, including, but not limited to, services performed in accordance with the statement on standards for consulting services or the statement on standards for forensic services, or any other engagement that is not under Section 12-6-3 NMSA 1978, including certain agency-initiated or other engagements in which the IPA's role is to perform an engagement, assist the client or testify as an expert witness in accounting, auditing, taxation, or other matters, given certain stipulated facts.

O. Definitions

beginning with the letter “O”:

[~~(1)~~] **“Office”**
or **“OSA”** means the [New Mexico
office of the state auditor.] office of
the state auditor of New Mexico.

[~~(2)~~] **“OMB”**
means the United States office of
management and budget.]

P. Definitions

beginning with the letter “P”:

(1) **“PED”**
means the New Mexico public
education department.

(2) **“PERA”**
means the New Mexico public
employee retirement association.

(3) [~~“PHA”~~
means public housing authority.]
“Primary government” means the
primary agency or primary local
public body that a component unit
is attached to due to their financial
relationship.

Q. Definitions

beginning with the letter “Q”:
[RESERVED]

R. Definitions

beginning with the letter “R”:

(1) [~~“REAC”~~
means real estate assessment center.

(2) ~~“REC”~~
means regional education cooperative.

[~~(3)~~] (2) **“Report”**
means a document issued as a result
of an annual financial and compliance
audit, special audit, attestation
engagement, performance audit,
forensic accounting engagement,
or AUP engagement regardless of
whether the document is on the
contractor’s letterhead or signed by
the contractor.

[~~(4)~~] (3) **“RSI”**
means required supplementary
information.

S. Definitions

beginning with the letter “S”:

(1) [~~“SAS”~~
means the AICPA’s statement on
auditing standards.

(2)
[**“SHARE”** means statewide
human resources accounting and
management reporting system.

(3) ~~“SI”~~
means supplementary information.

(4) ~~“SLO”~~
means the state land office.

(5) ~~“Special
audit”~~ means a limited-scope
examination of financial records
and other information designed to
investigate allegations of waste,
fraud, abuse, theft, non-compliance,
or misappropriation of funds, or to
quantify the extent of such losses,
including both attest engagements
and non-attest engagements,
performance audits, forensic
accounting engagements, and any
other engagement that is not part of
the annual financial statement and
compliance audit, depending on
designation or scope.

(6) ~~“State
auditor”~~ may refer to either the
elected state auditor of the state of
New Mexico, or personnel of the
office designated by the state auditor.

(7) ~~“STO”~~
means state treasurer’s office.]

(2) **“SOC”**
means system organization controls,
which is an audit review in connection
with system-level controls of a service
organization or entity-level controls
of other organizations.

(3) **“SOC-
1”** means an audit that provides an
opinion regarding the controls as the
service organization that are likely to
be relevant to user entities’ internal
control over financial reporting.

(4) **“SOC-
2”** means an audit that provides an
opinion about controls at the service
organization related to security,
availability, processing integrity,
confidentiality, or privacy to support
users’ evaluations of their own system
of internal control.

(5) **“SOC-3”**
means an audit to provide an opinion
about the effectiveness of controls
at the service organization relevant
to security, availability, processing
integrity, confidentiality, or privacy.

(6) **“Special
audit”** means a limited-scope audit
of an agency’s or local public body’s
financial affairs and transactions,
in whole or in part, including both
attest engagements and non-attest
engagements, performance audits,

forensic accounting engagements,
and any other engagement that is not
part of the annual financial statement
and compliance audit, depending on
designation or scope.

(7)
“Special investigation” or
“special examination” means a
limited-scope investigation into
or examination of an agency’s or
local public body’s financial records
and other information designed to
investigate allegations of waste,
fraud, abuse, theft, non-compliance,
or misappropriation of funds, or to
quantify the extent of such losses.

(8) **“State
auditor”** may refer to either the
elected state auditor of the state of
New Mexico, or personnel of the
office designated by the state auditor.

T. Definitions

beginning with the letter “T”:
[RESERVED]

(1) **“Tier”** is
established based on the amount of
each LPB’s [local public body’s]
annual revenue, pursuant to Section
12-6-3 NMSA 1978. [~~and 2.2.2.16-
NMAC.~~

(2) ~~“TRD”~~
means the New Mexico taxation and
revenue department.]

U. Definitions

beginning with the letter “U”:

(1) [~~“UFRS”~~
means uniform financial reporting
standards.

(2) **“Uniform
guidance”** means Title 2 U.S.
Code of Federal Regulations Part
200, Uniform Administrative
Requirements, Cost Principles, and
Audit Requirements for Federal
Awards.

[~~(3)~~] (2) **“U.S.
GAO”** means the United States
government accountability office.

V. Definitions

beginning with the letter “V”:
[RESERVED]

W. Definitions

beginning with the letter “W”:

“Waste” includes, but is not limited
to, the act of using or expending
resources carelessly, extravagantly, or
to no purpose. Importantly, waste can
include activities that do not include

abuse. Rather waste relates primarily to mismanagement, inappropriate actions, and inadequate oversight. Waste does not necessarily involve fraud or illegal acts. However, waste may be an indication of ~~[potential] internal control weakness, non-compliance, fraud, or illegal acts [and may still impact the achievement of defined objectives. (GAO-14-704G federal internal control standards paragraph 8.03-)].~~

X. Definitions
beginning with the letter “X”:
[RESERVED]

Y. Definitions
beginning with the letter “Y”:
[RESERVED]

Z. Definitions
beginning with the letter “Z”:
[RESERVED]
[2.2.2.7 NMAC - Rp, 2.2.2.7 NMAC, 3/28/2023; A, xx/xx/2024]

2.2.2.8 THE PROCUREMENT AND AUDIT PROCESS:

A. Firm profiles: For an IPA to be included on the state auditor’s list of approved firms to perform audits, AUPs, and other attest engagements, an IPA shall submit a firm profile online annually on the fifth business day in January, in accordance with the guidelines set forth herein. The OSA shall review each firm profile for compliance with the requirements set forth in this rule. IPAs shall notify the state auditor of changes to the firm profile as information becomes available. The state auditor shall approve contracts for audit, AUPs, and other attest engagements only with IPAs who have submitted a complete and correct firm profile that has been approved by the OSA, and who have complied with all the requirements of this rule, including but not limited to:

(1) Subsection A of 2.2.2.14 NMAC, continuing professional education requirements for all staff that the firm will use on any New Mexico governmental engagements;

(2) for IPAs who have audited agencies under this rule in the past, they shall have

previously complied with: 2.2.2.9 NMAC, report due dates, including notifying the state auditor regarding late audit reports and 2.2.2.13 NMAC, review of audit reports and audit documentation.

B. List of approved firms: The state auditor shall maintain a list of independent public accounting (IPA) firms that are approved and eligible to compete for audit contracts, AUPs, and other attest engagements with agencies. The state auditor’s list of approved firms shall be reviewed and updated on an annual basis. An IPA on the list of approved firms is approved to perform government audits, AUPs, and other attest engagements for agencies and local public bodies until the list of approved firms is published for the following year; provided that the OSA may restrict firms at any time for failure to submit firm profile updates timely. An IPA that is included on the state auditor’s list of approved firms for the first time may be subject to an OSA quality control review of the IPA’s working papers for audits, AUPs and other attest engagements. This review shall be conducted as soon as the documentation completion date, as defined by AU-C Section 230, has passed (60 days after the report release date, as posted on the OSA’s audit reports website). The state auditor shall approve contracts for audits, AUPs and other attest engagements only with IPA firms that have submitted a complete and correct firm profile complying with all the requirements set forth in this rule and that has been approved by the OSA. The OSA shall inform all IPAs whose firm profiles were submitted by the due date whether they are on the list of approved firms for audits, AUPs and other attest engagements and shall publish the list of approved firms concurrent with notification to government agencies to begin the procurement process to obtain an IPA to conduct the agency’s annual financial audit. Firms that only perform non-attest engagements, or otherwise do not meet applicable requirements, shall not be included on the list of approved firms.

C. Disqualified firms:
An IPA firm ~~[shall]~~ may not be included on the list of approved firms for audits, AUPs, and other attest engagements if any of the following applies to that IPA:

(1) the firm received a peer review rating of “failed”;

(2) the firm does not have a current New Mexico firm permit to practice, if applicable;

(3) the firm profile does not include at least one certified public accountant with a current CPA certificate who has met the GAGAS CPE requirements described at Subsection A of 2.2.2.14 NMAC, to perform GAGAS audits (however, firms seeking to contract only for agreed-upon-procedures engagements will not be disqualified if GAGAS CPE requirements have not been met);

(4) the IPA has been restricted in the past and has not demonstrated improvement (this includes submitting excessively deficient audit reports or having excessively deficient workpapers);

(5) the IPA made false statements in their firm profile or any other official communication with the OSA that were misleading enough to merit disqualification; or

(6) any other reason determined by the state auditor to serve the interest of the state of New Mexico.

D. Restriction:
(1) IPAs may be placed on restriction based on the OSA’s review of the firm profile and deficiency considerations as described below. Restriction may take the form of limiting either the type of engagements or the number of audit contracts, or both, that the IPA may hold. The OSA may impose a corrective action plan associated with the restriction. The restriction remains in place until the OSA notifies the IPA that the restriction has been modified or removed. The deficiency considerations include, but are not necessarily limited to:

(a)
failure to submit reports in accordance with report due dates provided in Subsection A of 2.2.2.9 NMAC, or the terms of their individual agency contract(s);

(b)
failure to submit late report notification letters in accordance with Subsection A of 2.2.2.9 NMAC;

(c)
failure to comply with this rule;

(d)
poor quality reports as determined by the OSA;

(e)
poor quality working papers as determined by the OSA;

(f)
a peer review rating of “pass with deficiencies” with the deficiencies being related to governmental audits;

(g)
failure to contract through the OSA for New Mexico governmental audits or AUP engagements;

(h)
failure to inform agency in prior years that the IPA is restricted;

(i)
failure to comply with the confidentiality requirements of this rule;

(j)
failure to invite the state auditor or the auditor’s designee to engagement entrance conferences, progress meetings or exit conferences after receipt of related notification from the OSA;

(k)
failure to comply with OSA referrals or requests in a timely manner;

(l)
suspension or debarment by the U.S. general services administration;

(m)
false statements in the IPA’s firm profile or any other official communication with the OSA;

(n)
failure to cooperate timely with requests from successor IPAs, such as reviewing workpapers;

(o)
failure to have required contracts approved by the OSA; or

(p)
any other reason determined by the state auditor to serve the interest of the state of New Mexico.

(2) The OSA shall notify any IPA that it proposes to place under restriction. If the proposed restriction includes a limitation on the number of engagements that an IPA is eligible to hold, the IPA shall not submit proposals or bids to new agencies if the number of multi-year proposals the IPA possesses at the time of restriction is equal to or exceeds the limitation on the number of engagements for which the IPA is restricted.

(3) An IPA under restriction is responsible for informing the agency whether the restricted IPA is eligible to engage in a proposed contract.

(4) If an agency or local public body submits an unsigned contract to the OSA for an IPA that was ineligible to perform that contract due to its restriction, the OSA shall reject the unsigned contract.

E. Procedures for imposition of restrictions:

(1) The state auditor may place an IPA under restriction in accordance with Subsection D of 2.2.2.8 NMAC.

(a) The state auditor or the auditor’s designee shall cause written notice of the restriction to be sent by email and certified mail, return receipt requested, to the IPA, which shall take effect as of the date of the letter of restriction. The letter shall contain the following information:

(i) the nature of the restriction;

(ii) the conditions of the restriction;

(iii) the reasons for the restriction;

(iv) the action to place the IPA on restriction is brought pursuant to Subsection A of Section 12-6-3 NMSA 1978 and these regulations;

(v) the IPA may request, in writing,

reconsideration of the proposed contract restriction which shall be received by the OSA within 15 calendar days from the date of the letter of restriction; and

(vi) the e-mail or street address where the IPA’s written request for reconsideration shall be delivered, and the name of the person to whom the request shall be sent.

(b) The IPA’s written request for reconsideration shall include sufficient facts to rebut on a point for point basis each deficiency noted in the OSA’s letter of restriction. The IPA may request an opportunity to present in person its written request for reconsideration and provide supplemental argument as to why the OSA’s determination should be modified or withdrawn. The IPA may be represented by an attorney licensed to practice law in the state of New Mexico.

(c) The IPA shall have forfeited its opportunity to request reconsideration of the restriction(s) if the OSA does not receive a written request for reconsideration within 15 calendar days of the date of the letter of restriction. The state auditor may grant, for good cause shown, an extension of the time an IPA has to submit a request for reconsideration.

(2) The OSA shall review an IPA’s request for reconsideration and shall make a determination on reconsideration within 15 calendar days of the IPA response letter unless the IPA has asked to present its request for reconsideration in person, in which case the OSA shall make a determination within 15 calendar days from the date of the personal meeting. The OSA may uphold, modify or withdraw its restriction pursuant to its review of the IPA’s request for reconsideration, and shall notify the IPA of its final decision in writing which shall be sent to the IPA via email and certified mail, return receipt requested.

F. Procedures to obtain professional services from

an IPA: Concurrent with publication of the list of approved firms, the OSA shall authorize agencies to select an IPA to perform their annual audit or AUP engagement. Agencies are prohibited from beginning the process of procuring IPA services for annual audits or AUPs pursuant to Section 12-6-3 NMSA 1978 until they receive the OSA authorization. Agencies that wish to begin the IPA procurement process for their annual audit or AUP pursuant to Section 12-6-3 NMSA 1978 prior to receiving OSA authorization may request an exception, however any such exceptions granted by OSA are subject to changes in the final audit rule applicable to the annual audit or AUP pursuant to Section 12-6-3 NMSA 1978 and changes in restrictions to, or disqualifications of, IPAs. The notification shall inform the agency that it shall consult its prospective IPA to determine whether the prospective IPA has been restricted by the OSA as to the type of engagement or number of contracts it is eligible to perform. Agencies that may be eligible for the tiered system shall complete the evaluation to determine the level of financial reporting described in Subsection B of 2.2.2.16 NMAC. Agencies that receive and expend federal awards shall follow the uniform guidance procurement requirements from 2 CFR 200.317 to 200.326 and 200.509, and shall also incorporate applicable guidance from the following requirements. Agencies shall comply with the following procedures to obtain professional services from an IPA for an audit or AUP engagement.

(1) Upon receipt of written authorization from the OSA to proceed, and at no time before then unless OSA has granted an exception, the agency shall identify all elements or services to be solicited pursuant to this rule and conduct a procurement that includes each applicable element of the annual financial and compliance audit, special audit, attestation engagement, performance audit, forensic audit or AUP engagement.

(2) Quotations or proposals for annual financial audits shall contain each of the following elements:

- (a) financial statement audit;
- (b) federal single audit (if applicable);
- (c) financial statement preparation so long as the IPA has considered any threat to independence and mitigated it;
- (d) other non-audit services (if applicable and allowed by current government auditing standards); and
- (e) other (i.e., audits of component units such as housing authorities, charter schools, foundations and other types of component units).

(3) Auditor

Rotation Rule: An IPA may not provide services to an agency or LPB for longer than six years. Upon the six-year mark, the agency or LPB must obtain a proposal for another IPA for at least two years before returning to the prior IPA. These timeframes for auditor rotation do not correlate with procurement timeframes, so the agency and LPB must ensure that the contract follows both this rule and the procurement rules applicable.

(4) The agency is encouraged to request multiple year proposals for audit and AUP services, however the term of the contract shall be for one year only. The parties shall enter a new audit contract each year. The agency is responsible for procuring IPA services in accordance with all applicable laws and regulations which may include, but are not limited to, the State Procurement Code (Chapter 13, Article 1 NMSA 1978) or equivalent home rule procurement provisions; GSD Rule, Section 1.4.1 NMAC, Procurement Code Regulations, if applicable; DFA Rule, Section 2.40.2 NMAC, Governing the Approval of Contracts for the Purchase of Professional Services; Uniform Guidance; and Section 13-1-191.1 NMSA 1978 relating to campaign

contribution disclosure forms. In the event that either of the parties to the contract elects not to contract for all of the years contemplated by a multiple year proposal, or the state auditor disapproves the contract, the agency shall use the procedures described above to procure services from a different IPA.

(5) If the agency is a component of a primary government, the agency's procurement for audit services shall include the AU-C 600 (group audits) requirements for the IPA to communicate and cooperate with the group engagement partner and team, and the primary government. This requirement applies to agencies and universities that are part of the statewide ACFR, other component units of the statewide ACFR and other component units of any primary government that use a different audit firm from the primary government's audit firm. Costs for the IPA to cooperate with the group engagement partner and team, and the primary government, caused by the requirements of AU-C 600 (group audit) may not be charged in addition to the cost of the engagement, as the OSA views this in the same manner as compliance with any other applicable standard.

(6) Agencies are encouraged to include representatives of the offices of separately elected officials such as county treasurers, and component units such as charter schools and housing authorities, in the IPA selection process. As part of their evaluation process, the OSA recommends that agencies consider the following when selecting an IPA for their annual audit or AUP pursuant to Section 12-6-3 NMSA 1978:

- (a) responsiveness to the request for proposal (the firm's integrity, record of past performance, financial and technical resources);
- (b) relevant experience, availability of staff with professional qualifications and technical abilities;

(c) results of the firm's peer and external quality control reviews; and

(d) weighting the price criteria less than fifteen percent of the total criteria taken into consideration by the evaluation process or selection committee.

Upon the OSA's request, the agency shall make accessible to the OSA all of the IPA procurement and selection documentation.

~~[(6)]~~ (7) After selecting an IPA for their annual audit or AUP pursuant to Section 12-6-3 NMSA 1978, each agency shall enter the appropriate requested information online on the OSA-connect website (www.osa-app.org). In order to do this, the agency shall register on OSA-Connect and obtain a user-specified password. The agency's user shall then use OSA-Connect to enter information necessary for the contract and for the OSA's evaluation of the IPA selection. After the agency enters the information, the OSA-Connect system generates a draft contract containing the information entered. The agency shall submit to the OSA for approval a copy of the unsigned draft contract by following the instructions on OSA-Connect.

~~[(7)]~~ (8) The OSA shall notify the agency as to the OSA's approval or rejection of the selected IPA and contract. The OSA's review of audit contracts does not include evaluation of compliance with any state or local procurement laws or regulations; each agency is responsible for its own compliance with applicable procurement laws, regulations or policies. After the agency receives notification of approval of the selected IPA and contract from the OSA, the agency is responsible for getting the contract signed and sent to any oversight agencies for approval (if applicable). The OSA shall not physically sign the contract. After the agency obtains all the required signatures and approvals of the contract, the agency shall, within three weeks of OSA's approval of the contract, submit a copy of the fully executed contract

in an electronic portable document format (PDF) by uploading it in OSA-Connect.

~~[(8)]~~ (9) The agency shall submit the unsigned contract generated by OSA-Connect to the OSA by the due date shown below; submission prior to the due date shown below is permissible. In the event that the due date falls on a weekend or holiday, the due date shall be the next business day. If the unsigned contract is not submitted to the state auditor by these due dates, the IPA may, according to professional judgment, include a finding of non-compliance with Subsection F of 2.2.2.8 NMAC in the audit report or AUP report.

(a) Regional education cooperatives, cooperative educational services, independent housing authorities, hospitals and special hospital districts: April 15;

(b) school districts, counties, and higher education: May 1;

(c) incorporated counties (of which Los Alamos is the only one), local workforce investment boards and local public bodies with a June 30 year end that do not qualify for the tiered system: May 15;

(d) councils of governments, district courts, district attorneys, state agencies: June 1 and the state of New Mexico ACFR: July 31;

(e) local public bodies that qualify for the tiered system pursuant to Subsections A and B of 2.2.2.16 NMAC with a June 30 fiscal year end: July 30;

(f) local public bodies that qualify for the tiered system pursuant to Subsections A and B of 2.2.2.16 NMAC with a fiscal year end other than June 30 shall use a due date 30 days after the end of the fiscal year;

(g) agencies and local public bodies that do not qualify for the tiered system with a fiscal year end other than June 30 shall use a due date 30 days before the end of the fiscal year;

(h) component units that are being separately audited: on the primary government's due date;

(i) Charter schools that are chartered by the PED and agencies that are subject to oversight by the HED have the additional requirement of submitting their audit contract to PED or HED for approval (Section 12-6-14 NMSA 1978); and

(j) In the event the agency's unsigned contract is submitted to the OSA, but is not approved by the state auditor, the state auditor shall promptly communicate the decision, including the reason(s) for disapproval, to the agency, at which time the agency shall promptly submit a contract with a different IPA using OSA-Connect. This process shall continue until the state auditor approves an unsigned contract. During this process, whenever an unsigned contract is not approved by the state auditor, the agency may submit a written request to the state auditor for reconsideration of the disapproval. The agency shall submit its request no later than 15 calendar days after the date of the disapproval and shall include documentation in support of its IPA selection. If warranted, after review of the request, the state auditor may hold an informal meeting to discuss the request. The state auditor shall set the meeting in a timely manner with consideration given to the agency's circumstances.

~~[(9)]~~ (10) The agency shall retain all procurement documentation, including completed evaluation forms, for five years and in accordance with applicable public records laws.

~~[(10)]~~ (11) If the agency fails to submit an unsigned contract by the due date set forth in this rule, or, if no due date is applicable, within 60 days of notification from the state auditor to engage an IPA, the state auditor may conduct the audit or select the IPA for that agency. The reasonable costs of such an audit shall be borne by the agency audited unless otherwise

exempted pursuant to Section 12-6-4 NMSA 1978.

~~(11)~~ (12)

In selecting an IPA for an agency pursuant to Subsection F of 2.2.2.8 NMAC the state auditor shall at a minimum consider the following factors, but may consider other factors in the state auditor's discretion that serve the best interest of the state of New Mexico and the agency:

(a)

the IPA shall be drawn from the list of approved IPAs maintained by the state auditor;

(b)

an IPA subject to restriction pursuant to Subsection D of 2.2.2.8 NMAC, is ineligible to be selected under this paragraph;

(c)

whether the IPA has conducted one or more audits of similar government agencies;

(d)

the physical proximity of the IPA to the government agency to be audited;

(e)

whether the resources and expertise of the IPA are consistent with the audit requirements of the government agency to be audited;

(f)

the IPA's cost profile, including examination of the IPA's fee schedule and blended rates;

(g)

the state auditor shall not select an IPA in which a conflict of interest exists with the agency or that may be otherwise impaired, or that is not in the best interest of the state of New Mexico.

~~(12)~~ (13)

The state auditor shall consider, at a minimum, the following factors when considering which agencies shall be subject to the state auditor's selection of an IPA:

(a)

whether the agency is demonstrating progress in its own efforts to select an IPA;

(b)

whether the agency has funds to pay for the audit;

(c)

whether the agency is on the state auditor's "at risk" list;

(d)

whether the agency is complying with the requirements imposed on it by virtue of being on the state auditor's "at risk" list;

(e)

whether the agency has failed to timely submit its e-mailed draft unsigned contract copy in accordance with the audit rule on one or more occasions;

(f)

whether the agency has failed to timely submit its annual financial audit report in accordance with the audit rule due dates on one or more occasions.

~~(13)~~ (14)

The state auditor may appoint a committee of the state auditor's staff to make recommendations for the state auditor's final determination as to which IPAs shall be selected for each government agency subject to the discretion of the state auditor.

~~(14)~~ (15)

Upon selection of an IPA to audit a government agency subject to the discretion of the state auditor, the state auditor shall notify the agency in writing regarding the selection of an IPA to conduct its audit. The notification letter shall include, at a minimum, the following statements:

(a)

the agency was notified by the state auditor to select an IPA to perform its audit or AUP engagement;

(b) 60

days or more have passed since such notification, or the applicable due date in this rule has passed, and the agency failed to deliver its draft contract in accordance with this subsection;

(c)

pursuant to Subsection A of Section 12-6-14 NMSA 1978, the state auditor is selecting the IPA for the agency;

(d)

delay in completion of the agency's audit is contrary to the best interest of the state and the agency, and threatens the functioning of government and the preservation or protection of property;

(e)

in accordance with Section 12-6-4 NMSA 1978, the reasonable costs of such an audit shall be borne by the

agency unless otherwise exempted; and

(f)

selection of the IPA is final, and the agency shall immediately take appropriate measures to procure the services of the selected IPA.

G. State auditor

approval/rejection of unsigned

contract: The state auditor shall use discretion and may reject unsigned contracts as follows:

(1) An

unsigned audit contract, special audit contract, attestation engagement contract, performance audit contract, forensic accounting engagement contract or AUP professional services contract under 2.2.2.16 NMAC that does not serve the best interests of the public or the agency or local public body because of one or more of the following reasons:

(a)

lack of experience of the IPA;

(b)

failure to meet the auditor rotation requirements as follows: the IPA is prohibited from conducting the agency audit for a period of two years because the IPA already conducted those services for that agency for a period of ~~[eight]~~ six consecutive years;

(c)

lack of competence or staff availability;

(d)

circumstances that may cause untimely delivery of the audit report or AUP report;

(e)

unreasonably high or low cost to the agency or local public body;

(f)

terms in the proposed contract that the state auditor considers to be unfavorable, unfair, unreasonable, or unnecessary;

(g)

lack of compliance with the procurement code, the audit act, or this rule;

(h)

the agency giving too much consideration to the price of the IPA's response to the request for bids or request for proposals in relation to other evaluation criteria;

(i) newness of the IPA to the state auditor's list of approved firms;

(j) noncompliance with the requirements of Section 12-6-3 NMSA 1978 the audit act by the agency for previous fiscal years; or

(k) any other reason determined by the state auditor to be in the best interest of the state of New Mexico.

(2) An audit contract, special audit contract, attestation engagement contract, performance audit contract, or forensic accounting engagement contract or AUP contract of an IPA that has:

(a) breached a prior-year contract;

(b) failed to deliver an audit or AUP report on time;

(c) failed to comply with state laws or regulations of the state auditor;

(d) performed non-audit services (including services related to fraud) for an agency or local public body it is performing an audit, special audit, attestation engagement, performance audit, forensic accounting engagement or an AUP for, without prior approval of the state auditor;

(e) performed non-audit services under a separate contract for services that may be disallowed by GAGAS independence standards;

(f) failed to respond, in a timely and acceptable manner, to an OSA audit, special audit contract, attestation engagement contract, performance audit contract, forensic accounting engagement contract, AUP report review or working paper review;

(g) impaired independence during an engagement;

(h) failed to cooperate in providing prior-year working papers to successor IPAs;

(i) not adhered to external quality control

review standards as defined by GAGAS and 2.2.2.14 NMAC;

(j) has a history of excessive errors or omissions in reports or working papers;

(k) released the audit report or AUP report to the agency, local public body or the public before the audit release letter or the OSA letter releasing the AUP report was received from the OSA;

(l) failed to submit a completed signed contingency subcontractor form, if required;

(m) failed to submit a completed firm profile as required by Subsection A of 2.2.2.8 NMAC or failed to include all staff in the firm profile who would be working on the firm's engagements;

(n) reached the limit of contracts to which the state auditor restricted the IPA;

(o) failed to respond to communications from the OSA or engagement clients within a reasonable amount of time; or

(p) otherwise, in the opinion of the state auditor, the IPA was unfit to be awarded a contract.

(3) An audit contract, special audit contract, attestation engagement contract, performance audit contract, forensic accounting engagement contract or AUP contract for an IPA received by the OSA, which the state auditor decides to perform himself with or without the assistance of an IPA, and pursuant to Section 12-6-3 NMSA 1978, even if the agency or local public body was previously designated for audit or AUP to be performed by an IPA.

H. Audit contract requirements: The agency shall use OSA-Connect at www.osa-app.org to submit the appropriate audit or AUP engagement contract. The OSA may provide audit or AUP engagement contract forms to the agency via facsimile, e-mail, or U.S. mail if specifically requested by the

agency. Only contract templates generated through OSA-Connect shall be accepted and shall:

(1) be completed and submitted in its unsigned form by the due date indicated at Subsection F of 2.2.2.8 NMAC;

(2) for all agencies whose contracts are approved through the DFA's contracts review bureau, have the IPA's combined reporting system (CRS) number verified by the taxation and revenue department (TRD) after approval by the state auditor; and

(3) in the compensation section of the contract, include the dollar amount that applies to each element of the contracted procedures that shall be performed;

(4) in the "other" section of the contract additional services shall be related to the scope of work, but not included in previous categories in the compensation section. Such costs shall be fully detailed and sufficiently describe the required audit related work in the "other provisions" section of the contract.

I. Professional liability insurance: The IPA shall maintain professional liability insurance covering any error or omission committed during the term of the contract. The IPA shall provide proof of such insurance to the state auditor with the firm profile. The amount maintained should be commensurate with the risk assumed. The IPA shall provide to the state auditor, prior to expiration, updated insurance information.

J. Breach of contract: A breach of any terms of the contract shall be grounds for immediate termination of the contract. The injured party may seek damages for such breach from the offending party. Any IPA who knowingly makes false statements, assurances, or disclosures may be disqualified from conducting audits or AUP engagements of New Mexico governmental agencies.

K. Subcontractor requirements:

(1) Audit firms that have only one individual qualified to supervise a GAGAS audit and issue the related audit report pursuant to Section 61-28B-17 NMSA 1978, and GAGAS Paragraph 4.16 shall submit with the firm profile, a completed contingency subcontractor form that is dated to be effective until the date the next firm profile shall be submitted. The form shall indicate which IPA on the state auditor's current list of approved IPA's shall complete the IPA's audits in the event the one individual with the qualifications described above becomes incapacitated and unable to complete the audit. See the related contingency subcontractor form available at www.osanm.org. The OSA shall not approve audit contracts for such a firm without the required contingency subcontractor form.

(2) In the event an IPA chooses to use a subcontractor to assist the IPA in working on a specific audit, then the IPA shall ~~[obtain the prior written approval of the state auditor to] submit a subcontract with the reason for subcontracting a portion of the audit work to the OSA for approval.~~ The IPA may subcontract only with IPAs ~~[who have submitted a completed and approved firm profile to the state auditor as required in Subsection A of 2.2.2.8 NMAC] on the approved IPA list.~~ Subcontractors are subject to an independence analysis, which may include the ~~[IPA rotation] auditor rotation rule~~ requirements of ~~[Subsection G] Subsection F~~ of 2.2.2.8 NMAC. ~~["Technical review contracts" are considered subcontracting and are subject to the requirements of this Section. The audit contract shall specify subcontractor responsibility, who shall sign the report(s), and how the subcontractor shall be paid. For additional information see the subcontract work section of the OSA website.]~~

(3) "Technical review contracts" are considered subcontracting and are subject to the requirements of this section. The audit contract shall specify

subcontractor responsibility, who shall sign the report(s), and how the subcontractor shall be paid. For additional information see the subcontract work section of the OSA website.

L. IPA independence:

IPAs shall maintain independence with respect to their client agencies in accordance with the requirements of the current government auditing standards.

M. Progress

Payments: The state auditor shall approve progress and final payments for the annual audit contract as follows:

(1) Subsection A of Section 12-6-14 NMSA 1978 (contract audits) provides that "payment of public funds may not be made to an independent auditor unless a contract is entered into and approved as provided in this section."

(2) Subsection B of Section 12-6-14 NMSA 1978 (contract audits) provides that the state auditor may authorize progress payments on the basis of evidence of the percentage of audit work completed as of the date of the request for partial payment.

(3) Progress payments up to seventy percent do not require state auditor approval provided that the agency certifies the receipt of services before any payments are made to the IPA. If the report has been submitted, progress payments up to eighty-five percent do not require state auditor approval. The agency shall monitor audit progress and make progress payments only up to the percentage that the audit is completed. If requested by the state auditor, the agency or the IPA shall provide a copy of the approved invoices and progress billing(s). Progress payments between seventy percent and ninety-five percent if no report has been submitted, or eighty-five and ninety-five percent if a report has been submitted, require state auditor approval after being approved by the agency. When component unit audits are part of a primary government's audit contract, requests for progress payments on

the component unit audit(s) shall be included within the primary government's request for progress payment approval. In this situation, the OSA shall not process separate progress payment approvals submitted by the component unit.

(4) The state auditor may limit progress payments allowed to be made without state auditor approval for an IPA whose previous audits were submitted after the due date specified in Subsection A of 2.2.2.9 NMAC to only the first fifty percent of the total fee.

(5) Section 12-6-14 NMSA 1978 (contract audits) provides that final payment under an audit contract may be made by the agency to the IPA only after the state auditor has determined, in writing, that the audit has been made in a competent manner in accordance with contract provisions and this rule. The state auditor's determination with respect to final payment shall be communicated as follows:

(a) stated in the letter accompanying the release of the report to the agency; or

(b) in the case of ongoing law enforcement investigations, stated in a letter prior to the release of the report to the agency.

In no circumstance may the total billed by the IPA under the audit contract exceed the total contract amount, as amended if applicable. Further, as the compensation section of the contract shall include the dollar amount that applies to each element of the contracted procedures that shall be performed, if certain procedures, such as a single audit, are determined to be unnecessary and are not performed, the IPA may not bill the agency for these services. Final payment to the IPA by the agency prior to review and release of the audit report by the state auditor is considered a violation of Section 12-6-14 NMSA 1978 and this rule and shall be reported as an audit finding in the audit report of the agency. If this statute is violated, the IPA may be removed from the state auditor's list of approved auditors.

N. Contract amendment requirements:

(1) Contract amendments to contracts for audit services, AUP services, or non-attest services shall be submitted to the OSA regarding executed contracts. Contracts may not be amended after they expire. The contract should be amended prior to the additional work being performed or as soon as practicable thereafter. The agency shall use OSA-Connect at www.osa-app.org to submit the appropriate draft audit or AUP engagement contract amendment. The OSA's review of audit contracts and amendments does not include an evaluation of compliance with the state procurement code or other applicable requirements. Although the parties may amend the delivery dates in a contract, audit report regulatory due dates cannot be modified by amendment. The OSA's review of audit contract amendments does not include evaluation of compliance with any state or local procurement laws or regulations; each agency is responsible for its own compliance with applicable procurement laws, regulations, or policies.

(2) Contract amendments submitted for state auditor approval shall include a detailed explanation of:

(a) the work to be performed and the estimated hours and fees required for completion of each separate professional service contemplated by the amendment; and

(b) how the work to be performed relates to the scope of work outlined in the original contract.

(3) Since annual financial audit contracts are fixed-price contracts, contract amendments for fee increases shall only be approved for extraordinary circumstances, reasons determined by the state auditor to be in the best interest of the state of New Mexico, or a significant change in the scope of an audit. For example, if an audit contract did not include a federal single audit, a contract amendment

shall be approved if a single audit is required. Other examples of significant changes in the scope of an audit include: the addition of a new program, function or individual fund that is material to the government-wide financial statements; the addition of a component unit; and the addition of special procedures required by this rule, a regulatory body or a local, state, or federal grantor. Contract amendments shall not be approved to perform additional procedures to achieve an unmodified opinion. The state auditor shall also consider the auditor independence requirements of Subsection L of 2.2.2.8 NMAC when reviewing contract amendments for approval. The OSA shall review amendment requests and respond to the agency and the IPA within 30 calendar days of receipt.

(4) If a proposed contract amendment is rejected for lack of adequate information, the IPA and agency may submit a corrected version for reconsideration.

O. Termination of audit contract requirements:

(1) The state auditor may terminate an audit contract to be performed by an IPA after determining that the audit has been unduly delayed, or for any other reason, and perform the audit entirely or partially with IPAs contracted by the OSA (consistent with the October 6, 1993, stipulated order, *Vigil v. King*, No. SF 92-1487(C)). The notice of termination of the contract shall be in writing.

(2) If the agency or IPA terminates the audit or AUP engagement contract pursuant to the termination paragraph of the contract, the OSA shall be notified of the termination immediately. The party sending out the termination notification letter shall simultaneously send a copy of the termination notification letter to the OSA with an appropriate cover letter, addressed to the state auditor.

(a) The agency is responsible for procuring the services of a new IPA in accordance with all applicable laws

and regulations, and this rule.

(b) The unsigned contract for the newly procured IPA shall be submitted to the OSA within 30 calendar days of the date of the termination notification letter.

(c) As indicated in Subsection A of 2.2.2.9 NMAC, the state auditor shall not grant extensions of time to the established regulatory due dates.

(d) If the IPA does not expect to deliver the engagement report by the regulatory due date, the IPA shall submit a written notification letter to the state auditor and oversight agency as required by Subsection A of 2.2.2.9 NMAC or Subsection G of 2.2.2.16 NMAC.

[2.2.2.8 NMAC - Rp, 2.2.2.8 NMAC, 3/28/2023; A, xx/xx/2024]

2.2.2.9 REPORT DUE DATES:

A. Report due dates:
The IPA shall deliver the electronic draft annual financial audit report to the state auditor by 5:00 p.m. on the date specified in the audit contract and send it electronically by the due date. IPAs and agencies are encouraged to perform interim work as necessary and appropriate to meet the following due dates.

(1) The audit report due dates are as follows:

(a) regional education cooperatives, cooperative educational services and independent housing authorities: September 30;

(b) hospitals and special hospital districts: October 15;

(c) higher education, state agencies not specifically named elsewhere in this Subsection, district courts, district attorneys, the New Mexico finance authority, the New Mexico lottery authority, and other agencies with June 30 fiscal year-ends that are reported as component units in the state of New Mexico ACFR: November 1;

<p>(d) school districts, TRD, CYFD, DOH, DOT, DWS, HSD, GSD, ECECD, SLO, and NMCD: November 15;</p>	<p>(m) any agency that requires its report to be released by any specific date (e.g., due to board meeting, federal reporting, etc.): the earlier of its agency due date or one month prior to the requested release date; and</p>	<p>(4) AU-C 700.41 requires the auditor's report to be dated after audit evidence supporting the opinion has been obtained and reviewed, the financial statements have been prepared and the management representation letter has been signed. AU-C 580.20 requires the management representation letter to be dated the same date as the independent auditor's report.</p>
<p>(e) [the] PED, <u>New Mexico department of homeland security and emergency management</u>, the state investment council, and the three post-employment benefit agencies (PERA, ERB, and the retiree health care authority): the Wednesday before Thanksgiving day;</p>	<p>(n) late audit or AUP reports of any agency (not performed in the current reporting period): not more than six months after the date the contract was executed.</p>	<p>(5) As soon</p>
<p>(f) counties, incorporated counties (of which Los Alamos is the only one), workforce investment boards, councils of governments, and the New Mexico mortgage finance authority, and the state of New Mexico component appropriation funds (state general fund): December 1;</p>	<p>(2) If an audit report is not delivered on time to the state auditor, the auditor shall include this instance of non-compliance with Subsection A of 2.2.2.9 NMAC as an audit finding in the audit report. This requirement is not negotiable. If appropriate, the finding may also be reported as a significant deficiency or material weakness in the operation of the agency's internal controls over financial reporting pursuant to AU-C 265.</p>	<p>as the auditor becomes aware that circumstances exist that will make an agency's audit report be submitted after the applicable due date provided in Subsection A of 2.2.2.9 NMAC, the auditor shall notify the state auditor in writing. This notification shall consist of a letter, not an email. However, a scanned version of the official letter sent via email is acceptable. The late audit notification letter is subject to the confidentiality requirements detailed at Subsection M of 2.2.2.10 NMAC. This does not prevent the state auditor from notifying the legislative finance committee or applicable oversight agency pursuant to Subsections F and G of Section 12-6-3 NMSA 1978. There shall be a separate notification for each late audit report. The notification shall include a specific explanation regarding why the report will be late, when the IPA expects to submit the report and a concurring signature by a duly authorized representative of the agency. If the IPA is going to miss the expected report submission date, then the IPA shall send a revised notification letter. In the event the contract was signed after the report due date, the notification letter shall still be submitted to the OSA explaining the reason the audit report will be submitted after the report due date. The late report notification letter is not required if the report was submitted to the OSA for review by the due date, and then rejected by the OSA, making the report late when resubmitted. Reports resubmitted to the OSA with changes of the IPA's opinion after the report due date shall be considered late and a late audit finding shall be included in the audit report.</p>
<p>(g) local public bodies and municipalities: December 15;</p>	<p>(3) An electronic copy of the report shall be submitted for review by the OSA with the following: copy of the signed management representation letter and a copy of the completed state auditor report review guide (available at www.saonm.org). A report shall not be considered submitted to the OSA for the purpose of meeting the due date until a copy of the signed management representation letter and the completed report review guide are also submitted to the OSA. All separate reports prepared for component units shall also be submitted to the OSA for review, along with a copy of the management representation letter, and a completed report review guide for each separate audit report. A separate component unit report shall not be considered submitted to the OSA for the purpose of meeting the due date until a copy of the signed management representation letter and the completed report review guide are also submitted to the OSA. If a due date falls on a weekend or holiday, or if the OSA is closed due to inclement weather, the audit report is due the following business day by 5:00 p.m.</p>	
<p>(h) the state of New Mexico ACFR: December 31;</p>		
<p>(i) the ERB, PERA and retiree health care authority schedules of employer allocations reports and related employer guides required by Subsections Z of 2.2.2.10 NMAC: June 15;</p>		
<p>(j) agencies with a fiscal year-end other than June 30 shall submit the audit report no later than five months after the fiscal year-end;</p>		
<p>(k) regarding component unit reports (e.g., housing authorities, charter schools, hospitals, foundations, etc.), all separate audit reports prepared by an auditor that is different from the primary government's auditor, are due fifteen days before the primary government's audit report is due, unless some other applicable due date requires the report to be submitted earlier;</p>		
<p>(l) any agency that requires its report to be released by December 31st for any reason (bonding, GFOA, etc.): the earlier of its agency due date or December 1;</p>		

(6) The due date of any report not listed in Subsection A of 2.2.2.9 NMAC shall be the date specified in the contract.

B. Delivery and release of the audit report:

(1) The IPA shall deliver to the state auditor an editable electronic copy of the audit report for review by 5:00 p.m. on the day the report is due. Unfinished or excessively deficient reports shall not satisfy this requirement; such reports shall be rejected and returned to the IPA and the OSA may take action in accordance with Subsection C of 2.2.2.13 NMAC. When the OSA rejects and returns a substandard audit report to the IPA, the OSA shall consider the audit report late if the corrected report is not resubmitted by the due date. The IPA shall also report a finding for the late audit report in the audit report. The firm shall submit an electronic version of the corrected rejected report for OSA review. The name of the electronic file shall be “corrected rejected report” followed by the agency name and fiscal year.

(2) Before initial submission, the IPA shall review the report using the appropriate report review guide available on the OSA’s website. The report review guide shall reference applicable page numbers in the audit report. The audit manager or person responsible for the IPA’s quality control system shall either complete the report review guide or sign off as having reviewed it. All questions in the guide shall be answered, and the reviewer shall sign and date the last page of the guide. If the review guide is not accurately completed or incomplete, the report shall not be accepted.

(3) IPAs are encouraged to deliver completed audit reports before the due date. All reports, except for reports prepared by the OSA, shall be addressed to the state auditor, the agency executive and governing body (if applicable). Reports prepared by the OSA shall be addressed to the agency executive and governing body (if applicable).

The OSA shall review all audit reports submitted by the report due date before reviewing reports that are submitted after the report due date. Once the review of the report is completed pursuant to Subsection A of 2.2.2.13 NMAC, and any OSA comments have been addressed by the IPA, the OSA shall indicate to the IPA that the report is ready to print. After the OSA issues the “OK to print” communication for the audit report, the OSA shall authorize the IPA to submit the corrected report with the following items to the OSA within five business days; an electronic searchable version of the audit report labeled “final”, in PDF format, and an electronic Excel version of the summary of findings report and any other required electronic schedule (electronic schedules may not apply to engagements pursuant to 2.2.2.15 or 2.2.2.16 NMAC) if applicable, and an electronic excel version of the schedule of asset management costs for investing agencies, if applicable (all available at www.saonm.org). The OSA shall not release the report until the searchable electronic PDF version of the report and all required electronic Excel schedules are received by the OSA. The electronic file containing the final audit report shall:

(a) be created and saved as a PDF document in a single PDF file format (simply naming the file using a PDF extension .pdf does not by itself create a PDF file);

(b) be version 5.0 or newer;

(c) not exceed 10 megabytes (MB) per file submitted (contact the OSA to request an exception if necessary);

(d) have all security settings like self-sign security, user passwords, or permissions removed or deactivated so the OSA is not prevented from opening, viewing, or printing the file;

(e) not contain any embedded scripts or executables, including sound or movie (multimedia) objects;

(f) have a file name that ends with .pdf;

(g) be free of worms, viruses or other malicious content (a file with such content shall be deleted by the OSA);

(h) be “flattened” into a single layer file prior to submission;

(i) not contain any active hypertext links, or any internal/external links (although it is permissible for the file to textually reference a URL as a disabled link);

(j) be saved at 300 dots per inch (DPI) (lower DPI makes the file hard to read and higher DPI makes the file too large);

(k) have a name that starts with the OSA agency number, followed by the agency name, the fiscal year, and “final”; and

(l) be searchable.

(4) The IPA shall deliver to the agency the number of copies of the audit report indicated in the audit contract only after the state auditor has officially released the audit report with a “release letter”.

(a) The audited agency may waive the 5-day waiting period required by Section 12-6-5 NMSA 1978. To do so, the agency’s governing authority or the governing authority’s designee must provide written notification to the OSA of the waiver. The notification must be signed by the agency’s governing authority or the governing authority’s designee and be sent via letter, e-mail or fax to the attention of the state auditor. The OSA encourages agencies wishing to waive the five-day waiting period to provide the written notification *prior* to the submission of the final report to the OSA.

(b) The IPA shall deliver to the agency the number of copies of the audit report indicated in the audit contract only after the state auditor has officially released the audit report with a “release letter”. Release of

the audit report to the agency or the public prior to it being officially released by the state auditor shall result in an audit finding.

(5) After the release of a report, the OSA shall provide DFA and the legislative finance committee with notification that the report is available on the OSA website.

(6) If an audit report is reissued pursuant to AU-C 560, subsequent events and subsequently discovered facts, or AAG GAS 13.29-.30 for uniform guidance compliance reports, the reissued audit report shall be submitted to the OSA with a cover letter addressed to the state auditor. The cover letter shall explain that:

(a) the attached report is a “reissued” report;

(b) the circumstances that caused the reissuance; and

(c) a summary of the changes that appear in the reissued report. The OSA shall subject the reissued report to the report review process and upon completion of that report review process, shall issue a “release letter.” The contents of the reissued audit report are subject to the confidentiality requirements described in Subsection M of 2.2.2.10 NMAC. Agency management and the IPA are responsible for ensuring that the latest version of the report is provided to each recipient of the prior version of the report. The OSA shall notify the appropriate oversight agencies regarding the updated report on the OSA website.

(7) If changes to a released audit report are submitted to the OSA, and the changes do not rise to the level of requiring a reissued report, the IPA shall submit a cover letter addressed to the agency, with a copy to the state auditor, which includes the following minimum elements:

(a) a statement that the changes did not rise to the level of requiring a reissued report;

(b) a description of the circumstances that caused the resubmitted updated report; and

(c) a summary of the changes that appear in the resubmitted updated report compared to the prior released report. Agency management and the IPA are responsible for ensuring that the latest version of the resubmitted report is provided to each recipient of the prior version of the report. The OSA shall notify the appropriate oversight agencies regarding the updated report on the OSA website.

C. Required status reports: For an agency that has failed to submit audit or agreed-upon procedures reports as required by this rule, and has therefore been designated as “at risk” due to late reports, the state auditor requires the agency to submit written status reports to the OSA on each March 15, June 15, September 15, and December 15 that the agency is not in compliance with this rule. Status reports are not required for agencies that are included on the “at risk” list solely due to an adverse or disclaimed independent auditor’s opinion. The status report shall be signed by a member of the agency’s governing authority, a designee of the governing authority or a member of the agency’s top management. If the agency has a contract with an IPA to conduct the audit or perform the AUP engagement, the agency must send the IPA a copy of the quarterly status report. IPAs engaged to audit or perform AUP engagements for agencies with late reports are responsible for assisting these agencies in complying with the reporting requirements of this section. Failure to do so shall be noted by the OSA and taken into account during the IPA Firm Profile evaluation process. At a minimum, the quarterly written status report shall include:

(1) a detailed explanation of the agency’s efforts to complete and submit its audit or agreed-upon procedures;

(2) the current status of any ongoing audit or agreed-

upon procedures work;

(3) any obstacles encountered by the agency in completing its audit or agreed-upon procedures; and

(4) a projected completion date for the financial audit or agreed-upon procedures report. [2.2.2.9 NMAC - Rp, 2 2.2.9 NMAC, 3/28/2023; A, xx/xx/2024]

2.2.2.10 GENERAL CRITERIA:

A. Annual financial and compliance audits:

(1) The financial audit shall cover the entire financial reporting entity including the primary government and the component units of the primary government, if any. For any financial and compliance audit the agency should produce all documents necessary to conduct the engagement.

(a) The primary government shall determine whether an agency that is a separate legal entity from the primary government is a component unit of the primary government as defined by GASBS 14, 39, 61, and 80 (as amended). The flowchart at GASBS 61.68 may be useful in making this determination. The primary government shall notify all other agencies determined to be component units by September 15 of the subsequent fiscal year. Failure to meet this due date results in a compliance finding. IPAs shall use GASB guidelines as found in relevant GASBS to determine the correct presentation of the component unit. All agencies that meet the criteria to be a component unit of the primary government shall be included with the audited financial statements of the primary government by discrete presentation or blended, as appropriate. Component units are reported using the government financial reporting format if they have one or more of the characteristics described at AAG SLV 1.01. If a component unit does not qualify to be reported using the governmental format and is not statutorily required to be reported using the governmental

format, that fact shall be explained in the notes to the financial statements (summary of significant accounting policies: financial reporting entity). If there was a change from the prior year's method of presenting a component unit or change in component units reported, the notes to the financial statements shall disclose the reason(s) for the change.

(b)

If a primary government has no component units, that fact shall be disclosed in the notes to the financial statements (summary of significant accounting policies: financial reporting entity). If the primary government has component units that are not included in the financial statements due to materiality, that fact shall also be disclosed in the notes.

(c)

The state auditor requires component unit(s) to be audited by the same audit firm that audits the primary government (except for public housing authority component units that are statutorily exempt from this requirement, and the statewide ACFR). For clarification, housing departments of a local government or a regional housing authority are not exempt from this requirement. Requests for exemption from this requirement shall be submitted in writing by the primary government to the state auditor. If the request to use a different auditor for the component unit is approved in writing by the state auditor, the following requirements shall be met:

(i)

the IPAs of the primary government and all component units shall consider and comply with the requirements of AU-C 600;

(ii)

the group engagement partner shall agree that the group engagement team will be able to obtain sufficient appropriate audit evidence through the use of the group engagement team's work or use of the work of the component auditors (AU-C 600.15);

(iii)

the component unit auditor selected shall appear on the OSA list of approved IPAs;

(iv)

all bid and auditor selection processes shall comply with the requirements of this rule;

(v)

the OSA standard contract template shall be used by both the primary government and the component unit;

(vi)

the primary government, the primary engagement partner, management of the component unit, and the component unit auditor shall all coordinate their efforts to ensure that the audit reports of the component unit and the primary government are submitted by the applicable due dates;

(vii)

all component unit findings shall be disclosed in the primary government's audit report (except the statewide ACFR, which shall include only component unit findings that are significant to the state as a whole); and

(viii)

any separately issued component unit financial statements and associated auditors' reports shall be submitted to the state auditor by the due date in Subsection A of 2.2.2.9 NMAC for the review process described in Subsection A of 2.2.2.13 NMAC.

(d)

With the exception of the statewide ACFR, the following SI pertaining to component units for which separately issued financial statements are not available shall be audited and opined on as illustrated in AAG SLV 16.103 example A-15: financial statements for each of the component unit's major funds, combining and individual fund financial statements for all of the component unit's non-major funds, and budgetary comparison statements for the component unit's general fund and major special revenue funds that have legally adopted annual budgets (AAG SLV 3.22).

(2) Audits

of agencies shall be comprised of a financial and compliance audit of the financial statements and schedules as follows:

(a)

The level of planning materiality

described at AAG SLV 4.72-4.73 and exhibit 4-1 shall be used. Planning materiality for component units is at the individual component unit level.

(b)

The scope of the audit includes the following statements and disclosures which the auditor shall audit and give an opinion on. The basic financial statements (as defined by GASB and displayed in AAG SLV exhibit 4-1) consisting of:

(i)

the governmental activities, the business-type activities, and the aggregate discretely presented component units;

(ii)

each major fund and the aggregate remaining fund information;

(iii)

budgetary comparison statements for the general fund and major special revenue funds that have legally adopted annual budgets (when budget information is available on the same fund structure basis as the GAAP fund structure, the state auditor requires that the budgetary comparison statements be included as part of the basic financial statements consistent with GASBS 34 fn. 53, as amended, and AAG SLV 11.12 and 11.13); and

(iv)

the related notes to the financial statements.

(c)

Budgetary comparison statements for the general fund and major special revenue funds presented on a fund, organization, or program structure basis because the budgetary information is not available on the GAAP fund structure basis for those funds shall be presented as RSI pursuant to GASBS 41.

(d)

The auditor shall apply procedures and report in the auditor's report on the following RSI (if applicable) pursuant to AU-C 730:

(i)

management's discussion and analysis (GASBS 34.8-.11);

(ii)

RSI data required by GASBS 67 and 68 for defined benefit pension plans;

(iii) RSI schedules required by GASBS 43 and 74 for postemployment benefit plans other than pension plans;

(iv) RSI schedules required by GASBS 45 and 75 regarding employer accounting and financial reporting for postemployment benefits other than pensions; and

(v) infrastructure modified approach schedules derived from asset management systems (GASBS 34.132-133).

(e) The audit engagement and audit contract compensation include an AU-C 725 opinion on the SI schedules presented in the audit report. The auditor shall subject the information on the SI schedules to the procedures required by AU-C 725. The auditor shall report on the remaining SI in an other-matter paragraph following the opinion paragraph in the auditor's report on the financial statements pursuant to AU-C 725. With the exception of the statewide ACFR, the following SI schedules are required to be included in the AU-C 725 opinion if the schedules are applicable to the agency:

(i) primary government combining and individual fund financial statements for all non-major funds (GASBS 34.383);

(ii) the schedule of expenditures of federal awards required by uniform guidance;

(iii) the schedule of pledged collateral required by Subsection P of 2.2.2.10 NMAC;

(iv) the FDS of housing authorities pursuant to Subsection B of 2.2.2.12 NMAC;

(v) the school district schedule of cash reconciliation required by Subsection C of 2.2.2.12 NMAC. In addition, the school district schedule of cash reconciliation SI shall be subjected to audit procedures that ensure the

cash per the schedule reconciles to the PED reports as required by Subsection C of 2.2.2.12 NMAC;

(vi) any other SI schedule required by this rule.

B. Governmental auditing, accounting and financial reporting standards: The audits shall be conducted in accordance with:

(1) the most recent revision of GAGAS issued by the United States government accountability office;

(2) U.S. auditing standards-AICPA (clarified);

(3) uniform administrative requirements, cost principles, and audit requirements for federal awards (uniform guidance);

(4) AICPA audit and accounting guide, government auditing standards and single audits, (AAG GAS) latest edition;

(5) AICPA audit and accounting guide, state and local governments (AAG SLV) latest edition; and

(6) 2.2.2 NMAC, requirements for contracting and conducting audits of agencies, latest edition.

C. Financial statements and notes to the financial statements: The financial statements and notes to the financial statements shall be prepared in accordance with accounting principles generally accepted in the United States of America. Governmental accounting principles are identified in the government accounting standards board (GASB) codification, latest edition. IPAs shall follow interpretations, technical bulletins, and concept statements issued by GASB, other applicable pronouncements, and GASB illustrations and trends for financial statements. In addition to the revenue classifications required by NCGAS 1.110, the OSA requires that the statement of revenues, expenditures, and changes in fund balance - governmental funds include classifications for intergovernmental

revenue from federal sources and intergovernmental revenue from state sources, as applicable.

D. Requirements for preparation of financial statements:

(1) The financial statements presented in audit reports shall be prepared from the agency's books of record and contain amounts rounded to the nearest dollar.

(2) The financial statements are the responsibility of the agency. The agency shall maintain adequate accounting records, prepare financial statements in accordance with accounting principles generally accepted in the United States of America, and provide complete, accurate, and timely information to the IPA as requested to meet the audit report due date imposed in Subsection A of 2.2.2.9 NMAC.

(3) If there are differences between the financial statements and the books, the IPA shall provide to the agency the adjusting journal entries and the supporting documentation that reconciles the financial statements in the audit report to the books.

(4) If the IPA prepared the financial statements in their entirety from the client-provided trial balance or underlying accounting records the IPA should conclude significant threats to independence exist and shall document the threats and safeguards applied to mitigate the threats to an acceptable level. If the threats cannot be documented as mitigated the IPA may appropriately decide to decline to provide the service. IPAs should refer to the GAGAS conceptual framework to evaluate independence. The fact that the auditor prepared the financial statements from the client-provided trial balance or underlying records shall be disclosed on the exit conference page of the audit report.

E. Audit documentation requirements:

(1) The IPA's audit documentation shall be retained for a minimum of five-years from the date shown on the opinion letter of the audit report or longer if requested

by the federal oversight agency, cognizant agency, or the state auditor. Audit documentation, including working papers, are the property of the IPA or responsible certificate holder per Subsection A of Section 61-28B-25 NMSA 1978. Audit documentation includes all documents used to support any opinions or findings included in the report. The state auditor shall have access to the audit documentation at the discretion of the state auditor.

(2) When requested by the state auditor, all of the audit documentation shall be delivered to the state auditor by the due date indicated in the request. State auditor review of audit documentation does not transfer the ownership of the documents. Ownership of the audit documentation is maintained by the IPA or responsible certificate holder.

(3) The audit documentation of a predecessor IPA shall be made available to a successor IPA in accordance with AU-C 510.07 and 510.A3 to 510.A11, and the predecessor auditor's contract. Any photocopy costs incurred shall be borne by the requestor. If the successor IPA finds that the predecessor IPA's audit documentation does not comply with applicable auditing standards and this rule, or does not support the financial data presented in the audit report, the successor IPA shall notify the state auditor in writing specifying all deficiencies. If the state auditor determines that the nature of deficiencies indicate that the audit was not performed in accordance with auditing or accounting standards generally accepted in the United States of America and related laws, rules and regulations, and this rule, any or all of the following actions may be taken:

(a) the state auditor may require the predecessor IPA firm to correct its working papers and reissue the audit report to the agency, federal oversight or cognizant agency and any others receiving copies;

(b) the state auditor may deny or limit the issuance of future audit contracts; or

(c) the state auditor may refer the predecessor IPA to the New Mexico public accountancy board for possible licensure action.

F. Auditor communication requirements:

(1) The IPA shall comply with the requirements for auditor communication with those charged with governance as set forth in AU-C 260 and GAGAS 6.06 and 6.07.

(2) After the agency and IPA have an approved audit contract in place, the IPA shall prepare a written and dated engagement letter during the planning stage of a financial audit, addressed to the appropriate officials of the agency, keeping a copy of the signed letter as part of the audit documentation. In addition to meeting the requirements of the AICPA professional standards and the GAGAS requirements, the engagement letter shall state that the engagement shall be performed in accordance with 2.2.2 NMAC.

(3) The audit engagement letter shall not include any fee contingencies. The engagement letter shall not be interpreted as amending the contract. Nothing in the engagement letter can impact or change the amount of compensation for the audit services. Only a contract amendment submitted pursuant to Subsection N of 2.2.2.8 NMAC may amend the amount of compensation for the audit services set forth in the contract.

(4) A separate engagement letter and list of client prepared documents is required for each fiscal year audited. The IPA shall provide a copy of the engagement letter and list of client prepared documents immediately upon request from the state auditor.

(5) The IPA shall conduct an audit entrance conference with the agency with representatives of the agency's governing authority and top management, which may include

representatives of any component units (housing authorities, charter schools, hospitals, foundations, etc.), if applicable. The OSA has the authority to notify the agency or IPA that the state auditor shall be informed of the date of the entrance conference and any progress meetings. If such notification is received, the IPA and agency shall invite the state auditor or the auditor's designee to attend all such conferences no later than 72 hours before the proposed conference or meeting.

(6) All communications with management and the agency's oversight officials during the audit, regarding any instances of non-compliance or internal control weaknesses, shall be made in writing. The auditor shall obtain and report the views of responsible officials of the audited agency concerning the audit findings, pursuant to GAGAS 6.57-6.60. Any violation of law or good accounting practice, including instances of non-compliance or internal control weaknesses, shall be reported as audit findings per Section 12-6-5 NMSA 1978. Separate management letter comments shall not be issued as a substitute for such findings.

G. Reverting or non-reverting funds: Legislation can designate a fund as reverting or non-reverting. The IPA shall review the state law that appropriated funds to the agency to confirm whether any unexpended, unencumbered balance of a specific appropriation shall be reverted and to whom. The law may also indicate the due date for the required reversion. Appropriate audit procedures shall be performed to evaluate compliance with the law and accuracy of the related liability account balances due to other funds, governmental agencies, or both. The financial statements and the accompanying notes shall fully disclose the reverting or non-reverting status of a fund or appropriation. The financial statements shall disclose the specific legislation that makes a fund or appropriation non-reverting and any minimum balance required. If non-reverting funds are commingled

with reverting appropriations, the notes to the financial statements shall disclose the methods and amounts used to calculate reversions. For more information regarding state agency reversions, see Subsection A of 2.2.2.12 NMAC and the department of finance and administration (DFA) white papers “calculating reversions to the state general fund,” and “basis of accounting-modified accrual and the budgetary basis.” The statewide ACFR is exempt from this requirement.

H. Referrals and risk advisories: The Audit Act (Section 12-6-1 *et seq.* NMSA 1978) states that “the financial affairs of every agency shall be thoroughly examined and audited each year by the state auditor, personnel of the state auditor’s office designated by the state auditor or independent auditors approved by the state auditor.” (Section 12-6-3 NMSA 1978). Further, audits of New Mexico governmental agencies “shall be conducted in accordance with generally accepted auditing standards and rules issued by the state auditor.” (Section 12-6-3 NMSA 1978).

(1) In an effort to ensure that the finances of state and local governments are thoroughly examined, OSA may provide IPAs with written communications to inform the IPA that OSA received information that may suggest elevated risk in specific areas relevant to a particular agency’s annual financial and compliance audit. These communications shall be referred to as “referrals.” Referrals are considered confidential audit documentation. Referrals may relate to any topic, including the scope of the annual financial and compliance audit. IPAs shall take the circumstances described in OSA referral communications into account in their risk assessment and perform such procedures as, in the IPA’s professional judgment, are necessary to determine what further actions, if any, in the form of additional disclosures, findings, and recommendations are appropriate in connection with the annual audit of the agency. After the conclusion of fieldwork but at least 14 days prior

to submitting the draft annual audit report to the OSA for review, IPAs shall provide written confirmation to the OSA that the IPA took appropriate action in response to the referral. This written confirmation shall be submitted separately from any draft report and addressed to the attention of the OSA’s special investigations division. The written confirmation shall be submitted electronically to SIDreferrals@osa.state.nm.us and shall respond to all aspects of the referral and list any findings associated with the subject matter of the referral. IPAs shall retain adequate documentation in the audit workpapers to support the written confirmation to OSA that the IPA took appropriate action in response to the referral. As outlined in 2.2.2.13 NMAC the OSA may review IPA workpapers associated with the annual audit of any agency. OSA workpaper review procedures shall include examining the IPA documentation associated with referrals. Insufficient or inadequate documentation may result in deficiencies noted in the workpaper review letter and may negatively impact the IPA during the subsequent firm profile review process. In accordance with Subsection D of 2.2.2.8 NMAC, an IPA may be placed on restriction if an IPA refuses to comply with OSA referrals in a timely manner.

(2) OSA may issue written communications to inform agencies and IPAs that OSA received information that suggests elevated risk in specific areas relevant to the annual financial and compliance audits of some agencies. These communications shall be referred to as “risk advisories.” Risk advisories shall be posted on the OSA website in the following location: https://www.saonm.org/risk_advisories. Risk advisories may relate to any topic relevant to annual financial and compliance audits of New Mexico agencies. IPAs shall take the circumstances described in OSA risk advisories into account in their risk assessment and perform such procedures and testwork as, in the IPA’s professional

judgment, are necessary to determine what further action, if any, in the form of disclosure, findings and recommendations are appropriate in connection with the annual audit of the agency.

I. State auditor workpaper requirement: The state auditor requires that audit workpapers include a written audit program for fund balance and net position that includes tests for proper classification of fund balance pursuant to GASBS 54 and proper classification of net position pursuant to GASBS 34.34-.37 (as amended) and GASBS 46.4-.5 (as amended).

J. State compliance audit requirements: An IPA shall identify significant state statutes, rules, and regulations applicable to the agency under audit and perform tests of compliance. In designing tests of compliance, IPAs may reference AU-C 250 relating to consideration of laws and regulations in an audit of financial statements and AU-C 620 relating to using the work of an auditor’s specialist. As discussed in AU-C 250.A23, in situations where management or those charged with governance of the agency, or the agency’s in-house or external legal counsel, do not provide sufficient information to satisfy the IPA that the agency is in compliance with an applicable requirement, the IPA may consider it appropriate to consult the IPA’s own legal counsel. AU-C 620.06 and 620.A1 discuss the use of an auditor’s specialist in situations where expertise in a field other than accounting or auditing is necessary to obtain sufficient, appropriate audit evidence, such as the interpretation of contracts, laws and regulations. In addition to the significant state statutes, rules and regulations identified by the IPA, compliance with the following shall be tested if applicable (with the exception of the statewide ACFR):

(1) Procurement Code, Sections 13-1-1 to 13-1-199 NMSA 1978 including providing the state purchasing agent with the name of the agency’s chief procurement officer, pursuant to

Section 13-1-95.2 NMSA 1978, and Procurement Code Regulations, Section 1.4.1 NMAC, or home rule equivalent. All agencies must retain support for procurement until the contract expires or the minimum time required for record retention is met, whichever is longer.

(2) Per Diem and Mileage Act, Sections 10-8-1 to 10-8-8 NMSA 1978, and Regulations Governing the Per Diem and Mileage Act, Section 2.42.2 NMAC.

(3) Public Money Act, Sections 6-10-1 to 6-10-63 NMSA 1978, including the requirements that county and municipal treasurers deposit money in their respective counties, and that the agency receive a joint safe keeping receipt for pledged collateral. (In instances when another statute provides for a different timeline applicable to the agency, that statute shall control.)

(4) Public School Finance Act, Sections 22-8-1 to 22-8-48 NMSA 1978.

(5) Investment of Public Money Act, Sections 6-8-1 to 6-8-25 NMSA 1978.

(6) Public Employees Retirement Act, Sections 10-11-1 to 10-11-142 NMSA 1978. IPAs shall test to ensure eligible contributions are remitted to PERA. The IPA shall evaluate and test internal controls regarding employee eligibility for PERA and other benefits. IPAs shall evaluate risk associated with employees excluded from PERA and test that employees are properly excluded.

(7) Educational Retirement Act, Sections 22-11-1 to 22-11-55 NMSA 1978. IPAs shall test to ensure eligible contributions are remitted to ERA. The IPA shall evaluate and test internal controls regarding employee eligibility for ERA and other benefits. IPAs shall evaluate risk associated with employees excluded from ERA and test that employees are properly excluded.

(8) Sale of Public Property Act, Sections 13-6-1 to 13-6-8 NMSA 1978.

(9) Anti-Donation Clause, Article IX, Section 14, New Mexico Constitution.

(10) Special, deficiency, and supplemental appropriations (appropriation laws applicable for the year under audit).

(11) State agency budget compliance with Sections 6-3-1 to 6-3-25 NMSA 1978, and local government compliance with Sections 6-6-1 to 6-6-19 NMSA 1978.

(12) Lease purchase agreements, Article IX, Sections 8 and 11, New Mexico Constitution; Sections 6-6-11 to 6-6-12 NMSA 1978; *Montano v. Gabaldon*, 108 NM 94, 766 P.2d 1328 (1989).

(13) Accounting and control of fixed assets of state government, Sections 2.20.1.1 to 2.20.1.18 NMAC, (updated for GASBS 34 as applicable).

(14) Requirements for contracting and conducting audits of agencies, 2.2.2 NMAC.

(15) Article IX of the state constitution limits on indebtedness.

(16) Any law, regulation, directive or policy relating to an agency's use of gasoline credit cards, telephone credit cards, procurement cards, and other agency-issued credit cards.

(17) Retiree Health Care Act, Sections 10-7C-1 to 10-7C-19 NMSA 1978. IPAs shall test to ensure eligible contributions are reported to NMRHCA. NMRHCA employer and employee contributions are set forth in Section 10-7C-15 NMSA 1978. The IPA shall evaluate and test internal controls regarding employee eligibility for NMRHCA and other benefits. IPAs shall evaluate risk associated with employees excluded from NMRHCA and test that employees are properly excluded.

(18) Governmental Conduct Act, Sections 10-16-1 to 10-16-18 NMSA 1978.

(19) School Personnel Act, Sections 22-10A-1 to 22-10A-39 NMSA 1978.

(20) School Athletics Equity Act, Sections 22-31-1 to 22-31-6 NMSA 1978. IPAs shall test whether the district has submitted the required school-district-level reports, but no auditing of the reports or the data therein is required.

(21) The New Mexico opioid allocation agreement.

K. Federal requirements: IPAs shall conduct their audits in accordance with the requirements of the following government pronouncements and shall test federal compliance audit requirements as applicable:

(1) generally accepted government auditing standards (GAGAS) issued by the United States government accountability office, most recent revision;

(2) uniform administrative requirements, cost principles, and audit requirements for federal awards;

(3) compliance supplement, latest edition; and

(4) internal revenue service (IRS) employee income tax requirements. IRS Publication 15-B, employer's tax guide to fringe benefits, available online, provides detailed information regarding the taxability of fringe benefits.

L. Audit finding requirements:

(1) Communicating findings: IPAs shall communicate findings in accordance with generally accepted auditing standards and the requirements of GAGAS 6.17-6.30. All finding reference numbers shall follow a standard format with the four-digit audit year, a hyphen, and a three-digit sequence number (e.g. 20XX-001, 20XX-002 ... 20XX-999). All prior year findings shall include the finding numbers used when the finding was first reported under historical numbering systems in brackets, following the current year finding reference number (e.g., 2021-001 (2020-003)) to enable the report user to see what year the finding originated and how it was identified in previous

years. Finding reference numbers for single audit findings reported on the data collection form shall match those reported in the schedule of findings and questioned costs and the applicable auditor's report. Depending on the IPA's classification of the finding, the finding reference number shall be followed by one of the following descriptions: "material weakness"; "significant deficiency"; "material non-compliance"; "other non-compliance"; or "other matters."

(a)

IPAs shall evaluate deficiencies to determine whether individually or in combination they are significant deficiencies or material weaknesses in accordance with AU-C 260.

(b)

Findings that meet the requirements described in AAG GAS 4.12 shall be included in the report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with government auditing standards. AAG GAS 13.35 table 13-2 provides guidance on whether a finding shall be included in the schedule of findings and questioned costs.

(c)

Section 12-6-5 NMSA 1978 requires that "each report set out in detail, in a separate section, any violation of law or good accounting practices found by the audit or examination."

(i)

When auditors detect violations of law or good accounting practices that shall be reported per Section 12-6-5 NMSA 1978, but that do not rise to the level of significant deficiencies or material weaknesses, such findings are considered to warrant the attention of those charged with governance due to the statutory reporting requirement. The auditor shall communicate such violations in the "compliance and other matters" paragraph in the report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with government auditing standards.

Findings required by Section 12-6-5 NMSA 1978 shall be presented in a separate schedule of findings labeled "Section 12-6-5 NMSA 1978 findings". This schedule shall be placed in the back of the audit report following the financial statement audit and federal award findings. Per AAG GAS 13.49 there is no requirement for such findings to be included or referenced in the uniform guidance compliance report.

(d)

Each audit finding (including current year and unresolved prior-year findings) shall specifically state and describe the following:

(i)

condition (provides a description of a situation that exists and includes the extent of the condition and an accurate perspective, the number of instances found, the dollar amounts involved, if specific amounts were identified, and for repeat findings, management's progress or lack of progress towards implementing the prior year planned corrective actions);

(ii)

criteria (identifies the required or desired state or what is expected from the program or operation; cites the specific section of law, regulation, ordinance, contract, or grant agreement if applicable);

(iii)

effect (the logical link to establish the impact or potential impact of the difference between the situation that exists (condition) and the required or desired state (criteria); demonstrates the need for corrective action in response to identified problems or relevant risks);

(iv)

cause (identifies the reason or explanation for the condition or the factors responsible for the difference between what the auditors found and what is required or expected; the cause serves as a basis for the recommendation);

(v)

recommendation addressing each condition and cause; and

(vi)

agency response (the agency's

comments about the finding, including specific planned corrective actions with a timeline and designation of what employee position(s) are responsible for meeting the deadlines in the timeline).

(e)

Uniform guidance regarding single audit findings (uniform guidance 200.511): The auditee is responsible for follow-up and corrective action on all audit findings. As a part of this responsibility, the auditee shall prepare a summary schedule of prior audit findings and a corrective action plan for current year audit findings in accordance with the requirements of uniform guidance 200.511. The corrective action plan and summary schedule of prior audit findings shall include findings relating to the financial statements which shall be reported in accordance with GAGAS. The summary schedule of prior year findings and the corrective action plan shall be included in the reporting package submitted to the federal audit clearinghouse (AAG GAS 13.49 fn 38). In addition to being included in the agency response to each audit finding, the corrective action plan shall be provided on the audited agency's letterhead in a document separate from the auditor's findings. (COFAR frequently asked questions on the office of management and budget's uniform administrative requirements, cost principles, and audit requirements for federal awards at 2 CFR 200, Section 511-1).

(f)

All audit reports shall include a summary of audit results preceding the presentation of audit findings (if any). The summary of audit results shall include the type of auditor report issued and whether the following categories of findings for internal control over financial reporting were identified: material weakness, significant deficiency, and material noncompliance. AUP reports completed pursuant to 2.2.2.16 NMAC are not required to include a summary of audit results.

(2)

Prior year findings:

(a)

IPAs shall comply with the requirements of the most recent version of GAGAS relating to findings and recommendations from previous audits and attestation engagements. In addition, IPAs shall report the status of *all* prior-year findings and *all* findings from special audits performed under the oversight of the state auditor in the current year audit report in a summary schedule of prior year audit findings. The summary schedule of prior year audit findings shall include the prior year finding number, the title, and whether the finding was resolved, repeated, or repeated and modified in the current year. No other information shall be included in the summary schedule of prior year audit findings. All findings from special audits performed under the oversight of the state auditor shall be included in the findings of the annual financial and compliance audits of the related fiscal year. IPAs shall consider including findings from special audits in annual audit reports.

(b)

Uniform guidance regarding single audit prior year findings (uniform guidance 200.511): The auditor shall follow up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance with the uniform guidance, and report, as a current-year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding (AAG GAS 13.53).

(3) Current-

year audit findings: Written audit findings shall be prepared and submitted to management of the agency as soon as the IPA becomes aware of the findings so the agency has time to respond to the findings prior to the exit conference. The agency shall prepare “planned corrective actions” as required by GAGAS 6.57 and 6.58. The agency shall respond, in writing, to the IPA’s audit findings within 10 business days. Lack of agency responses

within the 10 business days does not warrant a delay of the audit report. The agency’s responses to the audit findings and the “planned corrective actions” shall be included in the finding after the recommendation.

If the IPA disagrees with the management’s comments in response to a finding, they may explain in the report their reasons for disagreement, after the agency’s response (GAGAS 6.59). Pursuant to GAGAS 6.60, “if the audited agency refuses to provide comments or is unable to provide comments within a reasonable period of time, the auditors may issue the report without receiving comments from the audited agency. In such cases, the auditors should indicate in the report that the audited agency did not provide comments.”

(4)

If appropriate in the auditor’s professional judgment, failure to submit the completed audit contract to the OSA by the due date at Subsection F of 2.2.2.8 NMAC may be reported as a current year compliance finding.

(5) If

an agency has entered into any professional services contract with an IPA with a scope of work that relates to fraud, waste, or abuse, and the contract was not approved by the state auditor, the IPA shall report a finding of non-compliance with Paragraph (2) of Subsection C of 2.2.2.15 NMAC.

(6) If an

agency subject to the procurement code failed to meet the requirement to have a certified chief procurement officer during the fiscal year, the IPA shall report a finding of non-compliance with Section 1.4.1.94 NMAC.

(7)

Component unit audit findings shall be reported in the primary government’s financial audit report. This is not required for the statewide ACFR unless a finding of a legally separate component unit is significant to the state as a whole.

(8) Except

as discussed in Subsections A and E of 2.2.2.12 NMAC, release of any portion of the audit report by the IPA or agency prior to being officially

released by the state auditor is a violation of Section 12-6-5 NMSA 1978 and requires a compliance finding in the audit report.

(9)

In the event that an agency response to a finding indicates in any way that the OSA is the cause of the finding, the OSA may require that a written response from the OSA be included in the report, below the other responses to that finding.

M. Exit conference and related confidentiality issues:

(1) The IPA

shall hold an exit conference with representatives of the agency’s governing authority and top management, which may include representatives of any component units (housing authorities, charter schools, hospitals, foundations, etc.), if applicable. The OSA has the authority to notify the agency or IPA that the state auditor shall be informed of the date of any progress meetings and the exit conference. If such notification is received, the IPA and agency shall invite the state auditor to attend all such conferences. If component unit representatives cannot attend the combined exit conference, a separate exit conference shall be held with the component unit’s governing authority and top management. The exit conference and presentation to governance shall occur in the forum agreed to by the agency and the IPA, to include virtual or telephonic options. The OSA reserves the right to require an in-person exit conference and presentation to the board. The date of the exit conference(s) and the names and titles of personnel attending shall be stated in the last page of the audit report.

(2) The IPA,

with the agency’s cooperation, shall provide to the agency for review a draft of the audit report (stamped “draft”), a list of the “passed audit adjustments,” and a copy of all the adjusting journal entries at or before the exit conference. The draft audit report shall include, at minimum, the following elements: independent auditor’s report, basic financial

statements, audit findings, summary schedule of prior year audit findings, and the reports on internal control and compliance required by government auditing standards and uniform guidance.

(3) Agency personnel and the agency's IPA shall not release information to the public relating to the audit until the audit report is released by the OSA, and has become a public record. This does not preclude an agency from submitting financial statements and notes to the financial statements, clearly marked as "draft" or "unaudited" to federal or state oversight agencies or bond rating agencies. Any draft financial statements provided to federal or state oversight agencies or to bond rating agencies shall exclude draft auditor opinions and findings, and any pages including references to auditor opinions or findings.

(4) Once the audit report is officially released to the agency by the state auditor (by a release letter) and the required waiting period of five calendar days has passed, unless waived by the agency in writing as described in Subparagraph (a) of Paragraph (4) of Subsection B of 2.2.2.9 NMAC, the audit report shall be presented by the IPA, to a quorum of the governing authority of the agency at a meeting held in accordance with the Open Meetings Act, if applicable. This requirement only applies to agencies with a governing authority, such as a board of directors, board of county commissioners, or city council, which is subject to the Open Meetings Act. The IPA shall ensure that the required communications to those charged with governance are made in accordance with AU-C 260.12 to 260.14.

(5) At all times during the audit and after the audit report becomes a public record, the IPA shall follow applicable standards and 2.2.2 NMAC regarding the release of any information relating to the audit. Applicable standards include but are not limited to the AICPA Code of Conduct ET Section 1.700.001 and related interpretations

and guidance, and GAGAS 6.53-6.55 and GAGAS 6.63-6.65. The OSA and the IPA shall not disclose audit documentation if such disclosure would undermine the effectiveness or integrity of the audit process. AU-C 230.A29.

N. Possible violations of criminal statutes in connection with financial affairs:

(1) IPAs shall comply with the requirements of GAGAS 6.19-6.24 relating to fraud, noncompliance with provisions of laws, regulations, contracts and grant agreements, waste, and abuse. Relating to contracts and grant agreements, IPAs shall extend the AICPA requirements pertaining to the auditors' responsibilities for laws and regulations to also apply to consideration of compliance with provisions of contracts or grant agreements. Concerning abuse, if an IPA becomes aware of abuse that could be quantitatively, or qualitatively material to the financial statements or other financial data significant to the audit objectives, the IPA shall apply audit procedures specifically directed to ascertain the potential effect on the financial statements or other financial data significant to the audit objectives.

(2) Pursuant to Section 12-6-6 NMSA 1978 (criminal violations), an agency, LPB, or IPA shall notify the state auditor immediately ~~[in writing]~~ upon discovery of any ~~[alleged]~~ apparent violation of a criminal statute in connection with financial affairs. If an agency or IPA has already made a report to law enforcement that fact shall be included in the notification. ~~[The notification shall be sent by e-mail to reports@osa.state.nm.us, by facsimile, or by US-mail. Notifications shall not be made through the fraud hotline.]~~ If not immediately known, a follow-up ~~[The]~~ notification shall include an estimate of the dollar amount involved, if known or estimable, and a description of the ~~[alleged]~~ apparent violation, including names of persons involved and any action taken or planned. ~~[The state auditor may cause~~

~~the financial affairs and transactions of the agency to be audited in whole or in part pursuant to Section 12-6-3 NMSA 1978 and 2.2.2.15 NMAC. If the state auditor does not designate an agency for audit, an agency shall follow the provisions of 2.2.2.15 NMAC when entering into a professional services contract for a special audit, performance audit, non-attest engagement, or attestation engagement regarding the financial affairs and transactions of the agency relating to financial fraud, waste and abuse.]~~

~~[~~ (3) ~~—~~ In accordance with Section 12-6-6 NMSA 1978, the state auditor, immediately upon discovery of any violation of a criminal statute in connection with financial affairs, shall report the violation to the proper prosecuting officer and furnish the officer with all data and information in the auditor's possession relative to the violation.]

O. Special revenue funds authority: The authority for creation of special revenue funds and any minimum balance required shall be shown in the audit report (i.e., cite the statute number, code of federal regulation, executive order, resolution number, or other specific authority) on the divider page before the combining financial statements or in the notes to the financial statements. This requirement does not apply to the statewide ACFR.

P. Public monies:

(1) All monies coming into all agencies (i.e., vending machines, fees for photocopies, telephone charges, etc.) shall be considered public monies and be accounted for as such. For state agencies, all revenues generated shall be authorized by legislation (MAPS FIN 11.4).

(2) If the agency has investments in securities and derivative instruments, the IPA shall comply with the requirements of AU-C 501.04-.10. If the IPA elects to use the work of an auditor's specialist to meet the requirements of AU-C 501, the requirements of AU-C 620 shall also be met.

(3) Pursuant to Section 12-6-5 NMSA 1978, each audit report shall include a list of individual deposit and investment accounts held by the agency. The information presented in the audit report shall include at a minimum:

(a) name of depository (i.e., bank, credit union, state treasurer, state investment council, etc.);

(b) account name;

(c) type of deposit or investment account (also required in separate component unit audit reports):

(i) types of deposit accounts include non-interest bearing checking, interest bearing checking, savings, money market accounts, certificates of deposit, etc.; and

(ii) types of investment accounts include state treasurer general fund investment pool (SGFIP), state treasurer local government investment pool (LGIP), U.S. treasury bills, securities of U.S. agencies such as Fannie Mae (FNMA), Freddie Mac (FHLMC), government national mortgage association (GNMA), Sallie Mae, small business administration (SBA), federal housing administration (FHA), etc.

(d) account balance of deposits and investments as of the balance sheet date;

(e) reconciled balance of deposits and investments as of the balance sheet date as reported in the financial statements; and

(f) for state agencies only, statewide human resources accounting and management reporting system (SHARE) fund number. In auditing the balance of a state agency's investment in the SGFIP, the IPA shall review the individual state agency's cash reconciliation procedures and determine whether those procedures would reduce the agency's risk of misstatement in the investment in SGFIP, and whether the

agency is actually performing those procedures. The IPA shall also take into consideration the complexity of the types of cash transactions that the state agency enters into and whether the agency processes its deposits and payments through SHARE. The IPA shall use professional judgment to determine each state agency's risk of misstatement in the investment in the SGFIP and write findings and modify opinions as deemed appropriate by the IPA.

(4) Pledged collateral:

(a) All audit reports shall disclose applicable collateral requirements in the notes to the financial statements. In addition, there shall be a SI schedule or note to the financial statements that discloses the collateral pledged by each depository for public funds. The SI schedule or note shall disclose the type of security (i.e., bond, note, treasury, bill, etc.), security number, committee on uniform security identification procedures (CUSIP) number, fair market value and maturity date.

(b) Pursuant to Section 6-10-17 NMSA 1978, the pledged collateral for deposits in banks and savings and loan associations shall have an aggregate value equal to one-half of the amount of public money held by the depository. If this requirement is not met the audit report shall include a finding. No security is required for the deposit of public money that is insured by the federal deposit insurance corporation (FDIC) or the national credit union administration (NCUA) in accordance with Section 6-10-16 NMSA 1978. Collateral requirements shall be calculated separately for each bank and disclosed in the notes.

(c) All applicable GASB 40 disclosure requirements relating to deposit and investment risk shall be met. In accordance with GASBS 40.8, relating to custodial credit risk, the notes to the financial statements shall disclose the dollar amount of deposits subject to custodial credit risk, and the

type of risk the deposits are exposed to. To determine compliance with the fifty percent pledged collateral requirement of Section 6-10-17 NMSA 1978, the disclosure shall include the dollar amount of each of the following for each financial institution: fifty percent pledged collateral requirement per statute, total pledged collateral, uninsured and uncollateralized.

(d) Repurchase agreements shall be secured by pledged collateral having a market value of at least one hundred two percent of the contract per Subsection H of Section 6-10-10 NMSA 1978. To determine compliance with the one hundred two percent pledged collateral requirement of Section 6-10-10 NMSA 1978, the disclosure shall include the dollar amount of the following for each repurchase agreement: one hundred-two percent pledged collateral requirement per statute, and total pledged collateral.

(e) Per Subsection A of Section 6-10-16 NMSA 1978, "deposits of public money shall be secured by: securities of the United States, its agencies or instrumentalities; securities of the state of New Mexico, its agencies, instrumentalities, counties, municipalities or other subdivisions; securities, including student loans, that are guaranteed by the United States or the state of New Mexico; revenue bonds that are underwritten by a member of the financial industry regulatory authority (known as FINRA), and are rated "BAA" or above by a nationally recognized bond rating service; or letters of credit issued by a federal home loan bank."

(f) Securities shall be accepted as security at market value pursuant to Subsection C of Section 6-10-16 NMSA 1978.

(g) State agency investments in the state treasurer's general fund investment pool do not require disclosure of specific pledged collateral for amounts held by the state treasurer. However, the notes to the financial

statements shall refer the reader to the state treasurer's separately issued financial statements which disclose the collateral pledged to secure state treasurer cash and investments.

(h)

If an agency has other "authorized" bank accounts, pledged collateral information shall be obtained from the bank and disclosed in the notes to the financial statements. The state treasurer monitors pledged collateral related to most state agency bank accounts. State agencies should not request the pledged collateral information from the state treasurer. In the event pledged collateral information specific to the state agency is not available, the following note disclosure shall be made: detail of pledged collateral specific to this agency is unavailable because the bank commingles pledged collateral for all state funds it holds. However, STO's collateral bureau monitors pledged collateral for all state funds held by state agencies in such "authorized" bank accounts.

(5) Agencies

that have investments in the state treasurer's local government investment pool shall disclose the information required by GASBS 79 in the notes to their financial statements. Agencies with questions about the content of these required note disclosures may contact STO (<http://www.nmsto.gov>) for assistance.

Q. Budgetary presentation:

(1) Prior year balance included in budget:

(a)

If the agency prepares its budget on the accrual or modified accrual basis, the statement of revenues and expenditures (budget and actual) or the budgetary comparisons shall include the amount of fund balance on the budgetary basis used to balance the budget.

(b) If

the agency prepares its budget on the cash basis, the statement of revenues and expenditures (budget and actual) or the budgetary comparisons shall include the amount of prior-year cash balance used to balance the budget (or fund balance on the cash basis).

(2) The

differences between the budgetary basis and GAAP basis revenues and expenditures shall be reconciled. If the required budgetary comparison information is included in the basic financial statements, the reconciliation shall be included on the statement itself or in the notes to the financial statements. If the required budgetary comparison is presented as RSI, the reconciliation to GAAP basis shall appear in either a separate schedule or in the notes to the RSI (AAG SLV 11.14). The notes to the financial statements shall disclose the legal level of budgetary control for the entity and any excess of expenditures over appropriations at the legal level of budgetary control. The legal level of budgetary control for local governments is at the fund level. The legal level of budgetary control for school districts is at the function level. The legal level of budgetary control for state agencies is explained at Subsection A of 2.2.2.12 NMAC. For additional information regarding the legal level of budgetary control the IPA may contact the applicable oversight agency (DFA, HED, or PED).

(3) Budgetary

comparisons shall show the original and final appropriated budget (same as final budget approved by DFA, HED, or PED), the actual amounts on the budgetary basis, and a column with the variance between the final budget and actual amounts.

(a)

If the budget structure for the general fund and major special revenue funds is similar enough to the GAAP fund structure to provide the necessary information, the basic financial statements shall include budgetary comparison statements for those funds.

(b)

Budgetary comparisons for the general fund and major special revenue funds shall be presented as RSI if the agency budget structure differs from the GAAP fund structure enough that the budget information is unavailable for the general fund and major special revenue funds.

An example of this "perspective difference" would occur if an agency budgets by program with portions of the general fund and major special revenue funds appearing across various program budgets. In a case like that the budgetary comparison would be presented for program budgets and include information in addition to the general fund and major special revenue funds budgetary comparison data (GASBS 41.03 and .10).

R. Appropriations:

(1) Budget

related findings:

(a) If

actual expenditures exceed budgeted expenditures at the legal level of budgetary control, that fact shall be reported in a finding and disclosed in the notes to the financial statements.

(b)

If budgeted expenditures exceed budgeted revenues (after prior-year cash balance and any applicable federal receivables used to balance the budget), that fact shall be reported in a finding. This type of finding shall be confirmed with the agency's budget oversight entity (if applicable).

(2) Special,

deficiency, specific, and capital outlay appropriations:

(a)

Special, deficiency, specific, and capital outlay appropriations shall be disclosed in the notes to the financial statements. The original appropriation, the appropriation period, expenditures to date, outstanding encumbrances, unencumbered balances, and amounts reverted shall be shown in a SI schedule or in a note to the financial statements. The accounting treatment of any unexpended balances shall be fully explained in the SI schedule or in a note to the financial statements. This is a special requirement of the state auditor, and it does not apply to the statewide ACFR audit.

(b)

The accounting treatment of any unexpended balances shall be fully explained in the SI schedule or in a note to the financial statements regarding the special appropriations.

S. Consideration of internal control and risk assessment in a financial statement audit:

(1) Audits performed under this rule shall include tests of internal controls (manual or automated) over assertions about the financial statements and about compliance related to laws, regulations, and contract and grant provisions. IPAs and agencies are encouraged to reference the U.S. GAOs' *Standards for Internal Control in the Federal Government*, known as the "Green Book", which may be adopted by state, local, and quasi-governmental Agencies as a framework for an internal control system.

(2) The department of information technology is to engage in an SOC-2 compliance audit of the SHARE system annually, starting in 2024.

(3) The OSA may select additional agencies' application systems of record for SOC Audit.

T. Required auditor's reports:

(1) The AICPA provides examples of independent auditor's reports in the appendix to chapter 4 of AAG GAS and appendix A to chapter 16 of AAG SLV. Guidance is provided in footnote 4 to appendix A to chapter 16 of AAG SLV regarding wording used when opining on budgetary statements on the GAAP basis. IPAs conducting audits under this rule shall follow the AICPA report examples. All independent auditor's reports shall include a statement that the audit was performed in accordance with auditing standards generally accepted in the United States of America and with applicable government auditing standards per GAGAS 6.36. This statement shall be modified in accordance with GAGAS 2.17b if some GAGAS requirements were not followed. Reports for single audits of fiscal years beginning on or after December 26, 2014 shall have references to OMB Circular A-133 replaced with references to Title 2 U.S. Code of Federal

Regulations (CFR) Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance 200.110(b), AAG GAS 4.89, Example 4-1).

(2) The AICPA provides examples of the report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with government auditing standards in the appendix to chapter 4 of AAG GAS. IPAs conducting audits under this rule shall follow the AICPA report examples.

(a) The state auditor requires the report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with government auditing standards be dated the same date as the independent auditor's report.

(b) No separate management letters shall be issued to the agency by the auditor. Issuance of a separate management letter to an agency shall be considered a violation of the terms of the audit contract and may result in further action by the state auditor. See also Subsection F of 2.2.2.10 NMAC regarding this issue.

(3) The AICPA provides examples of the report on compliance for each major federal program and on internal control over compliance required by the uniform guidance in the appendix to chapter 13 of AAG GAS. IPAs conducting audits under this rule shall follow the AICPA report examples.

(4) The state auditor requires the financial statements, RSI, SI, and other information required by this rule, and the following reports to be included under one report cover: the independent auditor's report; the report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with government auditing standards; and the report on

compliance for each major federal program and on internal control over compliance required by the uniform guidance. If applicable, the independent auditor's report shall include the AU-C 725 opinion on SI, the schedule of expenditures of federal awards and the HUD FDS (required by HUD guidelines on reporting and attestation requirements of uniform financial reporting standards). The report shall also contain a table of contents and an official roster. The IPA may submit a written request for an exemption from the "one report cover" requirement, but shall receive prior written approval from the state auditor in order to present any of the above information under a separate cover.

U. Disposition of property: Sections 13-6-1 and 13-6-2 NMSA 1978 govern the disposition of tangible personal property owned by state agencies, local public bodies, school districts, and state educational institutions. At least 30 days prior to any disposition of property included on the agency inventory list, written notification of the official finding and proposed disposition duly sworn and subscribed under oath by each member of the authority approving the action shall be sent to the state auditor. The disposition list shall include worn out, unusable or obsolete items, and may include trade-ins, and lost, stolen, or destroyed items, as applicable.

V. Joint powers agreements:

(1) Any joint powers agreement (JPA) shall be listed in a SI schedule in the audit report. The statewide ACFR schedule shall include JPAs that are significant to the state as a whole. The schedule shall include the following information for each JPA: participants; party responsible for operations; description; beginning and ending dates of the JPA; total estimated amount of project and portion applicable to the agency; amount the agency contributed in the current fiscal year; audit responsibility; fiscal agent if applicable; and name of the

government agency where revenues and expenditures are reported.

(2) For self-insurance obtained under a JPA, see the GASB Codification Section J50.113.

W. Inventory certification:

(1) All agencies shall comply with the requirements of Section 12-6-10 NMSA 1978 and also maintain a capitalization policy that complies with the law. All agencies shall maintain an inventory listing of chattels and equipment that cost over five thousand dollars (\$5,000).

(2) Agencies shall conduct an annual physical inventory of chattels and equipment on the inventory list at the end of each fiscal year in accordance with the requirements of Section 12-6-10 NMSA 1978. The agency shall certify the correctness of the inventory after the physical inventory. This certification shall be provided to the agency's auditors. The IPA shall audit the inventory listing for correctness and compliance with the requirements of the Audit Act.

X. Tax increment development districts: Pursuant to Subsection C of Section 5-15-9 NMSA 1978, tax increment development districts (TIDDs) are political subdivisions of the state, and they are separate and apart from the municipality or county in which they are located. Section 5-15-10 NMSA 1978 states that the district shall be governed by the governing body that adopted a resolution to form the district or by a five-member board composed of four members appointed by that governing body; provided, however, that the fifth member of the five-member board is the secretary of finance and administration or the secretary's designee with full voting privileges. However, in the case of an appointed board of directors that is not the governing body, at the end of the appointed directors' initial terms, the board shall hold an election of new directors by majority vote of owners and qualified resident electors. Therefore, a TIDD and its audit firm

shall apply the criteria of GASBS 14, 39, 61, and 80 to determine whether the TIDD is a component unit of the municipality or county that approved it, or whether the TIDD is a related organization of the municipality or county that approved it. If the TIDD is determined to be a related organization per the GAAP requirements, then the TIDD shall contract separately for an audit separate from the audit of the municipality or county that approved it.

Y. GASBS 68, accounting and financial reporting for pensions:

(1) PERA and ERB shall each prepare schedules of employer allocations as of June 30 of each fiscal year. The state auditor requires the following:

(a) Prior to distribution of the schedule of employer allocations, PERA and ERB shall obtain audits of their respective schedules. These audits shall be conducted in accordance with government auditing standards and AU-C 805, special considerations - audits of single financial statements and specific elements, accounts, or items of a financial statement.

(b) Pursuant to AU-C 805.16, the PERA and ERB auditors shall each issue a separate auditor's report and express a separate opinion on the AU-C 805 audit performed (distinct from the agency's regular financial statement and compliance audit). Additionally, the auditor shall apply the procedures required by AU-C 725 to all supplementary information schedules included in the schedule of employer allocations report in order to determine whether the supplementary information is fairly stated, in all material respects, in relation to the financial statements as a whole. The IPA shall include the supplementary information schedules in the related reporting in the other-matter paragraph pursuant to AU-C 725.09, regarding whether such information is fairly stated in all material respects in relation to the schedule of employer allocations as a whole.

(c) PERA and ERB shall include note disclosures in their respective schedule of employer allocations reports that detail each component of allocable pension expense at the fund level, excluding employer-specific pension expense for changes in proportion. Each plan shall also include note disclosures by fund detailing collective fund-level deferred outflows of resources and deferred inflows of resources. The disclosures shall include a summary of changes in the collective deferred and inflows outflows of resources (excluding employer specific amounts), by year of deferral.

(d) The AU-C 805 audits and resulting separate reports on the PERA and ERB schedules of employer allocations shall be submitted to the OSA for review and release pursuant to Subsection A of 2.2.2.13 NMAC, prior to distribution to the participant employers.

(e) As soon as the AU-C 805 reports become public record, PERA and ERB shall make the information available to their participant employers.

(f) PERA and ERB shall each prepare an employer guide that illustrates the correct use of their respective schedule of employer allocations report by their participant employers. The guides shall explicitly distinguish between the plan-level reporting and any employer-specific items. The calculations and record-keeping necessary at the employer level (for adjusting journal entries, amortization of deferred amounts, etc.) shall be described and illustrated. The employer guides shall be made available to the participant employers by June 30 of the subsequent fiscal. Stand-alone state agency financial statements that exclude the proportionate share of the collective net pension liability of the state of New Mexico shall include note disclosure referring the reader to the statewide ACFR for the state's net pension liability and other pension-related information.

(2)

Stand-alone state agency financial statements that exclude the proportionate share of the collective net pension liability of the state of New Mexico shall include note disclosure referring the reader to the statewide ACFR for the state's net pension liability and other pension-related information.

Z. GASBS 77, tax

abatement agreements: Unaudited, but final, GASBS 77 disclosure information shall be provided to any agency whose tax revenues are affected by the reporting agency's tax abatement agreements no later than September 15 of the subsequent fiscal year. This due date does not apply if the reporting agency does not have any tax abatement agreements that reduce the tax revenues of another agency. All tax abatement agreements entered into by an agency's component unit(s) shall be disclosed in the same manner as the tax abatement agreements of the primary government. If an agency determines that any required disclosure is confidential, the agency shall cite the legal authority for the determination.

AA. GASBS 75, accounting and financial reporting for postemployment benefits other than pensions: The retiree health care authority (RHCA) shall prepare a schedule of employer allocations as of June 30 of each fiscal year. The state auditor requires the following:

(1) Prior

to distribution of the schedule of employer allocations, RHCA shall obtain an audit of the schedule. This audit shall be conducted in accordance with government auditing standards and AU-C 805, special considerations - audits of single financial statements and specific elements, accounts, or items of a financial statement.

(2) Pursuant

to AU-C 805.16, the RHCA auditors shall issue a separate auditor's report and express a separate opinion on the AU-C 805 audit performed (distinct from the agency's regular financial statement and compliance audit). Additionally, the auditor shall apply

the procedures required by AU-C 725 to all supplementary information schedules included in the schedule of employer allocations report in order to determine whether the supplementary information is fairly stated, in all material respects, in relation to the financial statements as a whole. The IPA shall include the supplementary information schedules in the related reporting in the other-matter paragraph pursuant to AU-C 725.09, regarding whether such information is fairly stated in all material respects in relation to the schedule of employer allocations as a whole.

(3) RHCA

shall include note disclosures in the schedule of employer allocations report that detail each component of allocable OPEB expense at the fund level, excluding employer-specific OPEB expense for changes in proportion. RHCA shall also include note disclosures by fund detailing collective fund-level deferred outflows of resources and deferred inflows of resources. The disclosures shall include a summary of changes in the collective deferred outflows and inflows of resources (excluding employer specific amounts), by year of deferral.

(4) The AU-C

805 audit and resulting separate report on the RHCA schedule of employer allocations shall be submitted to the OSA for review and release pursuant to Subsection A of 2.2.2.13 NMAC, prior to distribution to the participant employers.

(5) As soon

as the AU-C 805 reports become public record, RHCA shall make the information available to its participant employers.

(6) RHCA

shall prepare an employer guide that illustrates the correct use of the schedule of employer allocations report by its participant employers. The guide shall explicitly distinguish between the plan-level reporting and any employer-specific items. The calculations and record-keeping necessary at the employer level (for adjusting journal entries, amortization of deferred amounts, etc.) shall

be described and illustrated. The employer guide shall be made available to the participant employers by June 30 of the subsequent fiscal year.

(7)

Stand-alone state agency financial statements that exclude the proportionate share of the collective OPEB liability of the state of New Mexico, shall include note disclosure referring the reader to the statewide ACFR for the state's net OPEB liability and other OPEB-related information.

[2.2.2.10 NMAC - Rp, 2.2.2.10 NMAC, 3/28/2023; A, xx/xx/2024]

2.2.2.14 CONTINUING PROFESSIONAL EDUCATION AND PEER REVIEW REQUIREMENTS:

A. Continuing

professional education: IPAs performing annual financial and compliance audits, or other attest engagements under GAGAS shall ensure that all members of their staff comply with the CPE requirements of the most recent revision of GAGAS.

B. Peer review

requirements: IPAs performing annual financial and compliance audits, or other attest engagements under GAGAS shall comply with the requirements of the most recent revision of GAGAS relating to quality control and assurance and external peer review.

(1) [Per-

~~AICPA PRP Section 1000 standards for performing and reporting on peer reviews, a]~~ An audit firm's due date for its initial peer review is 18 months from the date the firm enrolled in the peer review program or should have enrolled, whichever is earlier. A firm's subsequent peer review is due three years and six months from the previous peer review year end.

(2) The IPA

firm profile submission to the state auditor shall include copies of the following peer review documentation:

(a)

the peer review report for the auditor's firm;

(b) if applicable, detailed descriptions of the findings, conclusions and recommendations related to deficiencies or significant deficiencies required by GAGAS 5.91;

(c) if applicable, the auditor's response to deficiencies or significant deficiencies;

(d) the letter of acceptance from the peer review program in which the firm is enrolled; and

(e) a list of the governmental audits reviewed during the peer review.

(3) A peer review rating of "failed" on the auditor's peer review shall disqualify the IPA from performing New Mexico governmental audits.

(4) During the procurement process IPAs shall provide a copy of their most recent external peer review report to the agency with their bid proposal or offer. Any subsequent peer review reports received during the period of the contract shall also be provided to the agency.

(5) The peer review shall meet the requirements of GAGAS 5.60 to 5.95.

(6) The peer reviewer shall be familiar with this rule. This is a requirement of the state auditor that can be achieved by attendance at audit rule training provided by the OSA.

C. State auditor quality control reviews: The state auditor performs its own quality control review of IPA audit reports and working papers. An IPA that is included on the state auditor's list of approved firms for the first time may be subject to an OSA quality control review of the IPA's working papers. This review shall be conducted as soon as the documentation completion date, as defined by AU-C Section 230, has passed (60 days after the report release date). When the result of the state auditor's quality control review differs significantly from the external quality control report and corresponding peer review rating,

the state auditor may no longer accept external peer review reports performed by that reviewer. In making this determination, the state auditor shall take into consideration the fact that AICPA peer reviews are performed on a risk-based or key-element approach looking for systemic problems, while the state auditor reviews are engagement-specific reviews.

D. SOC Audit qualifications: The OSA requires any firm or IPA contracting with an agency or LPB to conduct a SOC 1 or SOC 2 Audit engagement to have the following proof of qualifications: Firms must have a SOC engagement peer review rating of pass to qualify for a SOC engagement. [2.2.2.14 NMAC - Rp, 2.2.2.14 NMAC, 3/22/2022; A, xx/xx/2024]

2.2.2.15 SPECIAL AUDITS AND EXAMINATIONS:

A. Fraud, waste or abuse in government reported by agencies, IPAs or members of the public:

(1) Reports of fraud, waste & abuse: Pursuant to the authority set forth in Subsection C of Section 12-6-3 NMSA 1978, the [state auditor] OSA may [conduct initial] initiate [fact-finding] special investigation or examination procedures in connection with reports of financial fraud, waste and abuse in government. [made by agencies, IPAs or members of the public. Reports may be made telephonically or in writing through the fraud hotline or website established by the state auditor for the confidential reporting of financial fraud, waste, and abuse in government. Reports may be made telephonically to the fraud hotline by calling 1-866-OSA-FRAUD (1-866-672-3728) or reported in writing through the state auditor's website at www.saonm.org.] Reports received or created by the [state auditor] OSA are confidential audit information and audit documentation in connection with the state auditor's statutory duty to examine and audit the financial affairs of every agency, or in connection with the state auditor's

statutory discretion to audit the financial affairs and transactions of an agency in whole or in part.

(2) Confidentiality of sources: The identity of a person making a report to the OSA [and associated allegations made directly to the state auditor orally or in writing, or telephonically or in writing through the state auditor's fraud hotline or website, or through any other means,] alleging financial fraud, waste, or abuse in government is confidential audit information and may not be disclosed, except as required by Section 12-6-6 NMSA 1978.

(3) Confidentiality of files: A report alleging financial fraud, waste, or abuse in government that is made to the OSA [directly to the state auditor orally or in writing, or telephonically or in writing] through the state auditor's fraud hotline or website,] and any resulting special audit, performance audit, attestation engagement or forensic accounting or other non-attest engagement [and all records and files related thereto] files are confidential audit documentation and may not be disclosed by the OSA or the agency, except to an independent auditor, performance audit team or forensic accounting team in connection with a special audit, performance audit, attestation engagement, forensic accounting engagement, non-attest engagement, or other existing or potential engagement regarding the financial affairs or transactions of an agency. [Any information related to a report alleging financial fraud, waste, or abuse in government provided to an independent auditor, performance audit team or forensic accounting team, is considered to be confidential audit or engagement documentation and is subject to confidentiality requirements, including but not limited to requirements under Subsections E and M of 2.2.2.10 NMAC, the Public Accountancy Act, and the AICPA Code of Professional Conduct.]

(a) Any records that result in, or are part

of, any subsequent or resulting special audit, performance audit, attestation engagement or forensic accounting or other non-attest engagement will be audit workpapers and therefore confidential. Records that result from, or are part of OSA, special investigations that do not result in a subsequent special audit, performance audit, attestation engagement or forensic accounting or other non-attest engagement may be disclosed, with personal identifier information redacted, once the examination or investigation is closed.

(b)

Any information related to a report alleging financial fraud, waste, or abuse in government provided to an independent auditor, performance audit team or forensic accounting team, is considered to be confidential audit or engagement documentation and is subject to confidentiality requirements, including but not limited to requirements under Subsections E and M of 2.2.2.10 NMAC, the Public Accountancy Act, and the AICPA Code of Professional Conduct.

(4) [The] If the

OSA [~~may make~~] makes inquiries of agencies as part of the [~~fact-finding~~] investigation process performed by the OSA's special investigations division [~~Agencies~~], agencies shall respond to the OSA inquiries within 15 calendar days of receipt or as soon as practicable under the circumstances with written notice to the OSA stating the basis for any delay. IPAs shall test compliance with this requirement and report noncompliance as a finding in the annual financial and compliance audit report.

B. Special audit or examination process:

(1)

Designation: Pursuant to Section 12-6-3 NMSA 1978, in addition to the annual audit, the state auditor may cause the financial affairs and transactions of an agency to be audited in whole or in part. Accordingly, the state auditor may designate an agency for special audit, attestation engagement, performance audit, forensic

accounting engagement, or non-attest engagement regarding the financial affairs and transactions of an agency or local public body based on information or a report received from an agency, IPA or member of the public. For purposes of this rule "special audit, attestation engagement, performance audit, forensic accounting engagement, or non-attest engagement" includes, without limitation, AUP, consulting, and contract close-out (results-based award) engagements that address financial fraud, waste, or abuse in government. It also includes non-attest engagements performed under the forensic services standards issued by the AICPA and engagements performed following the Code of Professional Standards issued by the Association of Certified Fraud Examiners (ACFE). The state auditor shall inform the agency of the designation by sending the agency a notification letter. The state auditor may specify the subject matter, the scope and any procedures required, the AICPA or other professional standards that apply, and for a performance audit, performance aspects to be included and the potential findings and reporting elements that the auditors expect to develop. Pursuant to Section 200.503 of Uniform Guidance, if a single audit was previously performed, the special audit, attestation engagement, performance audit or forensic accounting engagement shall be planned and performed in such a way as to build upon work performed, including the audit documentation, sampling, and testing already performed by other auditors. The attestation and performance audit engagements may be conducted pursuant to government auditing standards if so specified by the OSA.

(2) Costs:

All reasonable costs of special audits, attestation engagements, forensic accounting engagements, non-attest engagements, or single-entity performance audits conducted pursuant to this Section shall be borne by the agency audited pursuant to Section 12-6-4 NMSA 1978. The

state auditor, in its sole discretion, may apportion among the Agencies audited some or all of the reasonable costs of a multi-entity performance audit.

(3) Who

performs the engagement: The state auditor may perform the special audit, attestation engagement, performance audit, forensic accounting engagement, or non-attest engagement alone or with other professionals selected by the state auditor. Alternatively, the state auditor may require the engagement to be performed by an IPA or a team that may be comprised of any of the following: independent public accountants; individuals with masters degrees or doctorates in a relevant field such as business, public administration, public policy, finance, or economics; individuals with their juris doctorate; CFE-certified fraud examiners; CFF-certified forensic auditors; CIA-certified internal auditors; or other specialists. If the state auditor designates an agency for an engagement to be conducted by an IPA or professional team, the agency shall:

(a)

upon receipt of notification to proceed from the state auditor, identify all elements or services to be solicited, obtain the state auditor's written approval of the proposed scope of work, and request quotations or proposals for each applicable element of the engagement;

(b)

follow all applicable procurement requirements which may include, but are not limited to, Uniform Guidance, Procurement Code (Sections 13-1-28 through 13-1-199 NMSA 1978), or equivalent home rule procurement provisions when selecting an IPA or team to perform the engagement;

(c)

submit the following information to the state auditor by the due date specified by the state auditor:

(i)

a completed template for special audits, attestation engagements, performance audits or forensic accounting engagements, provided at

www.osanm.org, which the agency shall print on agency letterhead; and

(ii) a completed contract form including the contract fee, start and completion date, and the specific scope of services to be performed in the format prescribed by the OSA, provided at www.osanm.org, with all required signatures on the contract.

(d) If the agency fails to select an IPA and submit the signed contract to OSA by the due date specified by the state auditor, or, if none within 60 days of notification of designation from the state auditor, the state auditor may conduct the engagement or select the IPA for that agency in accordance with the process described at Subsection F of 2.2.2.8 NMAC.

(4) Errors: Contracts that are submitted to the OSA with errors or omissions shall be rejected by the state auditor. The state auditor shall return the rejected contract to the agency indicating the reason(s) for the rejection.

(5) Recommendation rejections: In the event the agency's recommendation is not approved by the state auditor, the state auditor shall promptly communicate the decision, including the reason(s) for rejection, to the agency, at which time the agency shall promptly submit a different recommendation. This process shall continue until the state auditor approves a recommendation and related contract. During this process, whenever a recommendation and related contract are not approved, the agency may submit a written request to the state auditor for reconsideration of the disapproval. The agency shall submit its request no later than 15 calendar days from the date of the disapproval and shall include documentation in support of its recommendation. If warranted, after review of the request, the state auditor may hold an informal meeting to discuss the request. The state auditor shall set the meeting in a timely manner with consideration given to the agency's circumstances.

(6) Contract amendments: Any proposed contract amendments shall be processed in accordance with Subsection N of 2.2.2.8 NMAC.

(7) Access to records and documents: For any special audit, attestation engagement, performance audit or forensic accounting engagement, or non-attest engagement, the state auditor and any engaged professionals shall have available to them all documents necessary to conduct the special audit, attestation engagement, performance audit, forensic accounting engagement, or non-attest engagement. Furthermore, pursuant to Section 12-6-11 NMSA 1978, when necessary for a special audit, attestation engagement, performance audit, forensic accounting engagement, or non-attest engagement the state auditor may apply to the district court of Santa Fe County for issuance of a subpoena to compel the attendance of witnesses and the production of books and records.

(8) Entrance, progress and exit conferences: The IPA or other professional shall hold an entrance conference and an exit conference with the agency, unless the IPA or other professional has submitted a written request to the state auditor for an exemption from this requirement and has obtained written approval of the exemption. The OSA has the authority to notify the agency or IPA or other professional that the state auditor shall be informed of the date of the entrance conference, any progress meetings and the exit conference. If such notification is received, the IPA or other professional and the agency shall invite the state auditor or the auditor's designee to attend all such conferences no later than 72 hours before the proposed conference or meeting. The state auditor may also require the IPA or other professional to submit its audit plan to the state auditor for review and approval. The date of the exit conference(s) and the names and titles of personnel attending shall be stated on the last page of the special audit report.

(9) Required reporting: All reports for special audits, attestation engagements, performance audits, forensic accounting engagements, or non-attest engagements related to financial fraud, waste or abuse in government undertaken pursuant to 2.2.2.15 NMAC (regardless of whether they are conducted pursuant to AICPA standards for consulting services, forensic services or for attestation engagements, non-attest engagements, or other professional standards) shall report as findings any fraud, illegal acts, non-compliance or internal control deficiencies, pursuant to Section 12-6-5 NMSA 1978. Each finding shall comply with the requirements of Subsection L of 2.2.2.10 NMAC for audit and attest engagements or Subsection D of 2.2.2.15 NMAC for non-attest engagements.

(10) Report review: As required by Section 12-6-14 NMSA 1978, the state auditor shall review reports of any special audit, attestation engagement, performance audit, forensic accounting engagement, or non-attest engagement made pursuant to this section for compliance with the professional services contract and this rule. Upon completion of the report, the IPA or other professional shall deliver the electronic report to the state auditor with a copy of any signed management representation letter, if applicable. Unfinished or excessively deficient reports shall be rejected by the state auditor. If the report is rejected the firm shall submit an electronic version of the corrected rejected report for state auditor review. The name of the electronic file shall be "corrected rejected report" followed by the agency name and fiscal year. The IPA or other professional shall respond to all review comments as directed by the state auditor.

(11) Report release: After OSA's review of the report for compliance with the professional services contract and this rule, the state auditor shall authorize the IPA to print and submit the final

report. An electronic version of the report, in the PDF format described at Subsection B of 2.2.2.9 NMAC, shall be delivered to the state auditor within five business days. The state auditor shall not release the report until all the required documents are received by the state auditor. The state auditor shall provide the agency with a letter authorizing the release of the report pursuant to Section 12-6-5 NMSA 1978. Agency and local public body personnel shall not release information to the public relating to the special audit, attestation engagement, performance audit, forensic accounting engagement, or non-attest engagement until the report is released and has become a public record pursuant to Section 12-6-5 NMSA 1978. Except for the exception under Subsection B of 2.2.2.15 NMAC, at all times during the engagement and after the engagement report becomes a public record, the IPA or other professional(s) shall not disclose to the public confidential information about the auditee or about the engagement. Confidential information is information that is not generally known to the public through common means of providing public information like the news media and internet.

(12) Disclosure by professionals: The IPA or other professional shall not disclose information identified as confidential information provided to them by the state auditor unless otherwise specified by the state auditor. Disclosure of confidential information by the IPA or other professional may result in legal action by the state auditor, or in the case of an IPA, restriction pursuant to Subsection D of 2.2.2.8 NMAC.

(13) Payment: Progress payments up to (but not including) ninety-five percent of the contract amount do not require state auditor approval and may be made by the agency if the agency monitors the progress of the services procured. If requested by the state auditor, the agency shall provide a copy of the approved progress billing(s). Final

payments over ninety-five percent may be made by the agency pursuant to either of the following:

(a) stated in the letter accompanying the release of the report to the agency, or
(b) in the case of ongoing law enforcement investigations, stated in a letter prior to the release of the report to the agency.

C. Agency-initiated special audits or examinations:

(1) Applicability: With the exception of agencies that are authorized by statute to conduct performance audits and forensic accounting engagements, this section applies to all special audits and examinations in which an agency enters into a professional services contract for a special audit, attestation engagement, performance audit, forensic accounting engagement, or non-attest engagement relating to financial fraud, waste or abuse, but the agency has not been designated by the state auditor for the engagement pursuant to [Subsection B of 2.2.2.15 NMAC] this rule. For purposes of this rule, "special audit, attestation engagement, performance audit, forensic accounting engagement, or non-attest engagement" includes, without limitation, AUP, consulting, forensic services and contract close-out (results-based award) engagements that address financial fraud, waste or abuse in government.

(2) [Contracting: An agency, IPA or other professional shall not enter into a professional services contract for a special audit, attestation engagement, performance audit, forensic accounting engagement, or non-attest engagement regarding the financial affairs and transactions of an agency and relating to financial fraud, waste or abuse in government without the prior written approval of the state auditor. The proposed professional services contract shall be submitted to the state auditor for review and approval after it has been signed by the agency and the IPA or other professional, unless the agency or IPA or other professional

applies to the state auditor for an exemption and the state auditor grants the exemption. When contracting with an IPA or other professional, the agency shall contract only with an IPA or other professional that has been approved by the state auditor to conduct such work. The state auditor may, in its sole discretion, require a non-IPA professional to submit proof of qualifications, a firm profile or equivalent documentation prior to approving the contract. The contract shall include the contract fee, start and completion date, and the specific scope of services to be performed, and shall follow any template that the state auditor may provide. See Subsection F of 2.2.2.10 NMAC for applicable restrictions on the engagement letter.] Any agency, local public body, IPA or other professional that enters into a professional services contract for a special audit or examination of the financial affairs and transactions of an agency or local public body that was not designated by the state auditor for the engagement must notify the OSA and provide a copy of any resulting report or any resulting findings of violations of law or good accounting practices to the OSA. Findings shall be reported as described in Subsection D of 2.2.2.15 NMAC. All findings relating to any violation of a criminal statute in connection with financial affairs must be reported immediately to the OSA pursuant to Section 12-6-6, NMSA 1978.

(3) Applicability of other rules: The provisions outlined in Subsection B of 2.2.2.15 NMAC apply to agency-initiated special audits, attestation engagements, performance audits and forensic accounting engagements.]

D. Finding requirements for special audits or examinations: Communicating findings: All finding reference numbers shall follow a consistent format. Findings required by Section 12-6-5 NMSA 1978 shall be presented in a separate schedule of findings and placed at the end of the report.

(a) Section 12-6-5 NMSA 1978 requires that for every special audit and

examination made “each report set out in detail, in a separate section, any violation of law or good accounting practices found by the audit or examination.”

(b)

Each finding shall specifically state and describe the following:

(i)

condition (provides a description of a situation that exists and includes the extent of the condition and an accurate perspective, the number of instances found, the dollar amounts involved, if specific amounts were identified);

(ii)

criteria (identifies the required or desired state or what is expected from the program or operation; cites the specific section of law, regulation, ordinance, contract, or grant agreement if applicable);

(iii)

effect (the logical link to establish the impact or potential impact of the difference between the situation that exists (condition) and the required or desired state (criteria); demonstrates the need for corrective action in response to identified problems or relevant risks);

(iv)

cause (identifies the reason or explanation for the condition or the factors responsible for the difference between what the auditors found and what is required or expected; the cause serves as a basis for the recommendation);

(v)

recommendation addressing each condition and cause; and

(vi)

agency response (the agency’s response shall include specific planned corrective actions with a timeline and designation of what employee position(s) are responsible for meeting the deadlines in the timeline).

[2.2.2.15 NMAC - Rp, 2.2.2.15 NMAC, 3/28/2023; A, xx/xx/2024]

REGULATION AND LICENSING DEPARTMENT HOME INSPECTOR BOARD

NOTICE OF PUBLIC RULE HEARING AND BOARD MEETING

The Regulation and Licensing Department (Department) in consultation with the New Mexico Home Inspector Board (Board) will hold a rule hearing on April 2, 2024 at 1:00 pm pursuant to 61-24D-3(F) NMSA 1978, immediately followed by a Regular meeting of the Board to discuss and consider adoption of the proposed rules listed below. The rule hearing and subsequent Board meeting will be held at the Regulation and Licensing Department, 5500 San Antonio Drive NE, Albuquerque, NM 87109.

The hearing and subsequent board meeting may also be accessed via Cisco Webex Meetings by using the following link: <https://nmrld.webex.com/nmrld/j.php?MTID=m09e13c7f4ba3e25191767eae970de58a>
Meeting Number: 2662 333 5653
Meeting Password: Z9imM23yWX3
Join by Phone: 1 (844)621-3956

The purpose of the rule hearing is to receive public comments related to proposed amendments, repeal, and/or replacement of the following rules that address changes to

16.66.1 NMAC – General Provisions

16.66.2 NMAC - Fees

16.66.3 NMAC – Applications and Licenses

16.66.4 NMAC – License Renewals and Reactivations

16.66.5 NMAC – Continuing Education

16.66.8 NMAC – Disciplinary Proceedings

On February 13, 2024 copies of the proposed rules may be obtained by going to the Boards and Commissions Division, Home Inspector Board website at: <https://www.rld.nm.gov/>

boards-and-commissions/individual-boards-and-commissions/home-inspectors/statutes-rules-and-rule-hearings/ or by contacting the Board Administrator for the Board at (505) 222-9826.

The Department and the Board will begin accepting public comments on the proposed rules beginning February 13, 2024. Please submit written comments on the proposed changes to Roxanne Romo, Board Administrator, via electronic mail at: home.inspectors@rld.nm.gov or by regular mail at 5500 San Antonio Drive NE, Albuquerque, NM 87109 no later than April 2, 2024 by 9:00 am.

Written comments received during the public comment period will be posted to the Board’s website page linked above. Any person in attendance will be given the opportunity to present their comments at the rule hearing.

An individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the hearing or the board meeting, please contact Roxanne Romo, Board Administrator (505) 222-9826 at least 7 days prior to the rule hearing and board meeting. Public documents, including the proposed rules, meeting agenda and minutes, can be provided in various accessible formats.

Statutory Authority: 61-24D-3(F) NMSA 1978

Purpose of Proposed Rules: The above proposed rules by the Board at 16.66.1 through 16.66.5 NMAC govern the application requirements and process for licensure and licensure renewal, and establish the requirements for reactivation of licensure for individual applicants and licensees. The proposed rules intend to create consistency between the Board’s rules and recent legislative amendments to the Home Inspector Licensing Act, improve Board efficiency, and improve the functioning of the profession for the benefit of the public.

The above proposed rules by the Board at 16.66.8 NMAC govern disciplinary proceedings against licensees.

Summary of Proposed Changes:

The proposed amendments to the rules previously promulgated by the Board at 16.66.1 through 16.66.5 and at 16.66.8 NMAC would (1) amend the requirements for board examination and licensure to comport with recent legislative amendments, (2) define and incorporate “ancillary services” “pre-inspection agreements” and “business relationship,” (3) repeal state of emergency provisions, (4) amend the continuing education provisions to require minimum Board meeting attendance, (5) mandate exclusive three-year license periods, (6) amend the grounds for discipline to include failure to comply with continuing education requirements or the Board’s code of ethics, and (7) require satisfactory evidence of E&O insurance as a condition of renewal.

Proposed Rule Changes are shown below, with information to be removed with a strikethrough and bracketed [removed] and information to be added is underlined added.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING

CHAPTER 66 HOME INSPECTOR LICENSING

PART 1 GENERAL PROVISIONS

16.66.1.1 ISSUING

AGENCY: New Mexico home inspectors’ board.

[16.66.1.1 NMAC – N, 1/15/2021]

16.66.1.2 SCOPE: All licensed home inspectors, license applicants, other agencies, professional associations, and any member of the general public affected by or interested in home inspectors.
[16.66.1.2 NMAC – N, 1/15/2021]

16.66.1.3 STATUTORY

AUTHORITY: These rules are promulgated pursuant to the Home

Inspector Licensing Act, Sections 61-24D-1 through 16 NMSA 1978 (2019).

[16.66.1.3 NMAC – N, 1/15/2021]

16.66.1.4 DURATION:

Permanent.

[16.66.1.4 NMAC – N, 1/15/2021]

16.66.1.5 EFFECTIVE

DATE: January 15, 2021, unless a later date is cited at the end of a section.

[16.66.1.5 NMAC – N, 1/15/2021]

16.66.1.6 OBJECTIVE:

The objective of Part 1 of Chapter 66 is to set forth the provisions which apply to all of Chapter 66 of Title 16 and to define the terms and terminology related to home inspectors used through Chapter 66 of Title 16.

[16.66.1.6 NMAC – N, 1/15/2021]

16.66.1.7 DEFINITIONS:

These rules adopt, as if stated herein, all of the definitions contained in Section 61-24D-2 NMSA 1978.

A. Definitions

beginning with the letter “A”:

(1) “Access

panel” means a panel provided for homeowner inspection and maintenance that has removable or operable fasteners or latch devices in order to be lifted off, swung open, or otherwise removed by one person. Its edges and fasteners are not painted in place. Access panels are limited to those panels within normal reach at human height or from a stepladder, and those which are not blocked by stored items, furniture, or building components.

(2)

“Adverse condition” means a condition which is producing, or which has the potential to produce, a detrimental effect on a system or component that either impairs the system or component’s normally intended function or operation or which is inconsistent with generally established practice(s) regarding the historically or conventionally applied and acknowledged methods of installation, assembly, and operation or use.

(3) “Alarm”

means a warning device that is either permanently installed or freestanding, including but not limited to smoke detectors and alarms, carbon-monoxide detectors, flue gas and other spillage detectors, security equipment, ejector pumps, and smoke alarms.

(4) “Ancillary

services” means a service or inspection provided by a licensee or other provider but beyond the scope of the Standards of Practice for Home Inspection provided in 16.66.7 NMAC including but not limited to Mold Inspection, Lead Paint Assessment, Commercial Building Inspection, Pool and Spa Inspection, Termite Inspection, and other Ancillary Services.

(4) (5)

“Appliance” means a permanently installed household device powered by electricity or gas, but not including central heating, central cooling, or plumbing components.

(6)

“Approved examination” means an examination that has been third-party accredited as complying with the prevailing standards of the *Standards for Educational and Psychological Testing* as published in 2014 by the American Educational Research Association et. Al. and otherwise is approved by the board.

(5) (7)

“Architectural service” means any practice involving the art and science of building design for construction of any structure or grouping of structures, and the use of space within and surrounding the structures or the design, design development, preparation of construction contract documents, and administration of the construction contract.

(6) (8)

“Automatic safety controls” means devices designed and installed to protect systems and components.

B. Definitions

beginning with the letter “B”:

(1) “Board”

means the New Mexico Home Inspectors Board.

(2) **“Business relationship”** means a former, current or prospective relationship between a person or a person’s licensed agent, a home inspection company and its clients, a home inspection company and the company providing ancillary services, and between a client and a company providing ancillary services. The business relationship is based upon a financial contract between a person and a consumer which is in force including those relationships in which the individual benefits by receiving a salary, royalty, intellectual property rights, consulting fee, honoraria, ownership interest (e.g., stocks, stock options or other ownership interest, excluding diversified mutual funds), or other financial benefit. A former relationship if it occurred within a twelve-month time period of the contract, a current or prospective relationship shall be disclosed in writing to the client and the client must acknowledge in writing receipt and acceptance of the disclosure. The receipt and acceptance of the disclosure may be by electronic signature.

C. Definitions beginning with the letter “C”:

(1) **“Component”** means a constituent element or part of a system.

(2) **“Concealed, latent, or intermittent condition”** means any condition affecting any system or component which occurs after the inspection or is intermittent or otherwise not reasonably detectable by a competent and professional home inspector for any reason during the inspection.

(3) **“Condition”** means the visible and conspicuous state of being of an object regarding its appearance, quality, or working order.

(4) **“Cooling and air conditioning”** means:

(a) designed to be permanently installed for central cooling and or heating (ducted) or modular (non-ducted) systems. Systems may include evaporator coil(s), condenser unit(s),

heat pump(s), air handler(s) and furnace(s) or

(b) permanently installed evaporative cooling ducted systems. This definition does not include cooling units or appliances that are designed and intended to be portable, non-permanent and are designed for installation at windows.

(5) **“Cosmetic imperfection”** means an irregularity or imperfection which does not affect a component’s normally intended function or operation, and which could but is not required to be repaired.

(6) **“Crawlspace” or “underfloor crawlspace”** means the area within the confines of the foundation and between the ground and the underside of the lowest floor’s structural components.

D. Definitions beginning with the letter “D”:

(1) **“Describe”** means to document in writing.

(2) **“Dismantle”** means the act of taking apart or removing any component, device, or piece of equipment that is bolted, screwed, or fastened by other means and which would not otherwise be taken apart or removed by a homeowner in the course of normal household maintenance.

E. Definitions beginning with the letter “E”:

(1) **“Electronic signature”** means an electronic sound, signal, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

(+)(2) **“Engineering”** means the application of scientific knowledge for the design, control, or use of building structures, equipment, or apparatus.

(2)(3) **“Engineering service”** means any professional service or creative work requiring engineering education, training and experience, and the application of special knowledge

of the mathematical, physical and engineering sciences to such professional service or creative work as consultation, investigation, evaluation, planning, design and supervision of construction for the purpose of assuring compliance with the specifications and design, in conjunction with structures, buildings, machines, equipment, works or processes.

F. Definitions beginning with the letter “F”:

(1) **“Foundation”** means the base upon which a structure or wall rests, typically constituted by masonry, concrete, or stone, and typically located at least partially underground.

(2) **“Fuel burning appliance”** means any natural gas, LP gas, wood, coal, or other similar organic fuel burning device or appliance, including but not limited to fireplaces, whether masonry or factory built; fireplace inserts and stoves, woodstoves (room heaters), central furnaces, and combinations of said devices or appliances.

(3) **“Function”** means the action for which an item, component, or system is specially fitted or used, or for which an item, component, or system exists.

(4) **“Functional”** means the ability of an item, component, or system to perform its function.

(5) **“Functional drainage”** means the act or ability of a drain to empty in a reasonable amount of time without overflowing when another fixture is drained simultaneously.

(6) **“Functional flow”** means a reasonable flow at the highest fixture in a dwelling when another fixture is operated simultaneously.

(7) **“Further evaluation”** means examination and analysis by a qualified professional, tradesman, or service technician beyond that provided by a home inspection. Further evaluation may provide additional clarification, provide needed repairs, or discover additional adverse conditions

that need modifications or repairs for the component or system to perform its normally intended function or operation provided by an appropriately licensed or qualified individual.

G. Definitions beginning with the letter “G”:
“Generally established practice” means a practice of or pertaining to one or more of the following: the historically or conventionally applied and acknowledged methods of installation, assembly, and operation or use of residential systems and their related materials and components. Generally established practices may vary based on whether they were applicable at the time of construction or whether modifications to the property were made after the original construction.

H. Definitions beginning with the letter “H”:
(1) “Home inspection”, as defined by Subsection [E] (F) of Section 61-24D-2 NMSA 1978, means a noninvasive, nondestructive examination by a person of the interior and exterior components of a residential real property, including the property’s structural components, [heating,] foundation and roof, for the purposes of providing a professional written opinion regarding the site aspects and condition of the property and its attached or detached carports, garages and reasonably accessible installed components. “Home inspection” includes the examination of the property’s heating, cooling, plumbing and electrical systems, including the operational condition of the systems’ controls that are normally operated by a property owner.

(2) “Home inspector”, as defined by Subsection [F] (G) of Section 61-24D-2 NMSA 1978, means a person who performs home inspections for compensation.

I. Definitions beginning with the letter “I”:

(1) “Identify” means to describe a specific system or component by its type and to distinguish it by characteristics such as general or

specific materials, energy sources, etc., which differentiate that system of components from other similar systems and components.

(2) “Inspected Property” means the readily accessible areas of the buildings, site, items, components and systems included in the Home Inspection.

(3) “Inter-NACHI examination” means the examination offered, conducted, and proctored by the international association of certified home inspectors (Inter-NACHI).]

J. Definitions beginning with the letter “J”:
[RESERVED]

K. Definitions beginning with the letter “K”:
[RESERVED]

L. Definitions beginning with the letter “L”:

(1) “Licensure by credentials” means the process by which an individual applicant applies for a license as a home inspector in New Mexico on the basis of the applicant’s pre-existing license in another jurisdiction.

(2) “Licensure by training and examination” means the process by which an individual applicant applies for a license in New Mexico as a home inspector on the basis of the applicant’s education, training, and passage of [the national home inspector examination (NHIE) or the proctored Inter-NACHI examination.] a board approved examination.

(3) “Licensure by experience and examination” means the process by which an individual applicant applies for a license in New Mexico as a home inspector on the basis of the applicant’s previous work in New Mexico as a home inspector in each of the 24 months immediately preceding January 1, 2020, the applicant’s performance of at least 100 home inspections for compensation in the 24 months immediately preceding January 1, 2020, and the applicant’s passage of a [national home inspector examination, whether the NHIE or the proctored Inter-NACHI examination] a board approved examination.

M. Definitions beginning with the letter “M”:
[RESERVED]

N. Definitions beginning with the letter “N”:
(1) “National home inspector examination” or **“NHIE”** means the examination offered, conducted, and proctored by the examination board of professional home inspectors (EBPHI); or the examination offered, conducted and proctored by the international association of certified home inspectors (Inter-NACHI).]

(2) (1) “Normal operating controls” means thermostats, switches, valves, and other devices intended by design and manufacture to be used by homeowners or occupants in the normal and regular day-to-day operation of systems or components.

(3) (2) “Normally intended function or operation” means the customary or conventional purpose or use for which a system or component is installed and for which it is designed or intended by its manufacturer.

O. Definitions beginning with the letter “O”:

(1) “On-site water supply quality” means water quality based on the bacterial, chemical, mineral, and solids content of the water.

(2) “On-site water supply quantity” means the rate of flow of water.

P. Definitions beginning with the letter “P”:

(1) “Permanently installed” means an item, system, or component designed or intended to remain where originally placed, not easily moved, and which is attached, connected, or set in place for use so as to render moving or removing the item, system, or component impossible without the use of tools or equipment.

(2) “Pre-inspection agreement” means a signed agreement between the home inspector and their client executed prior to the commencement of the inspection detailing the services that the home inspector will provide.

(2) (3)

“Proctored examination” means a test taken under the supervision of testing staff. The proctor’s function is to ensure procedural integrity and security of the examination in a secure environment. Examination passage must be in writing and written by the organization or entity that administered the examination.

(3) (4)

“Professional liability insurance” means errors and omissions insurance.

Q. Definitions

beginning with the letter “Q”:

“Qualified” means having the training, skills, knowledge, expertise, competence and any special tools or equipment necessary to address adverse conditions and routine maintenance conditions and, where applicable, holding all required licenses and meeting all applicable industry standards and all governmental and statutory requirements.

R. Definitions

beginning with the letter “R”:

(1)

“Reactivation” means the process and board act of reactivating an inactive or expired license, thereby permitting the licensee to engage in the practice of home inspection.

(2) **“Readily**

accessible” means visually observable and able to be examined without requiring destructive measures; without risk to the inspector or others; without risk of damage to any item of personal or real property; without requiring the inspector to move, remove, damage, or disturb any wall, floor, ceiling, or window coverings; or any interior or exterior claddings or finish treatments; to move, remove, damage, disturb, climb upon, climb over, or straddle any item of personal property; to move, remove, damage, or disturb any landscape elements; or to interrupt the business of occupants, and not requiring disassembly or the use of any special protective clothing or special tools or equipment.

(3) **“Readily**

openable access panel” means a panel located within normal reach or from a four-foot stepladder, and

which is not blocked by stored items, furniture, or building components, provided for homeowner inspection and maintenance that has removable or operable fasteners or latch devices in order to be lifted off, swung open, or otherwise removed by one person, and its edges and fasteners are not painted in place, but not including electrical panel board enclosure dead front covers.

(4)

“Residential recreational facilities” means residential spas, saunas, steam baths, swimming pools, exercise, entertainment, athletic, playground and other similar equipment, and associated accessories that are installed at the inspected property.

(5)

“Reinstatement” means the process and board act of reinstating a suspended or revoked license, thereby permitting the licensee to engage in the practice of home inspection either with or without future conditions.

(6)

“Representative number” means all readily accessible identical components such as windows, electric switches and electric receptacles that serve as a typical or characteristic example of the items or components inspected. When one or a number of components or systems has identified “adverse conditions,” the report should indicate further evaluation of all identical components by qualified personnel.

(7) **“Roof**

drainage systems” means gutters, downspouts, leaders, splash blocks, and similar components used to carry water off a roof and away from a building.

(8) **“Routine**

maintenance” means typical, regular, ongoing, and expected maintenance that is part of an ongoing and prudent overall property and building systems upkeep program.

S. Definitions

beginning with the letter “S”:

(1) **“Safety**

glazing” means tempered glass, laminated glass, or rigid plastic.

(2) **“Shut**

down” means a piece of equipment

whose safety switch or circuit breaker is in the “off” position, or its fuse is missing or blown, or a system that cannot be operated by the device or control that a homeowner should normally use to operate it.

(3)

“Structural component” means a component that supports non-variable forces or weights (dead loads) and variable forces or weights (live loads). For purposes of this definition, a dead load is the fixed weight of a structure or piece of equipment, such as a roof structure on bearing walls, and a live load is a moving variable weight added to the dead load or intrinsic weight of a structure.

(4) **“System”**

means a permanently-installed group of interacting, interrelated, or interdependent components historically and conventionally designed and intended to perform one or more specific functions.

T. Definitions

beginning with the letter “T”:

“Technically exhaustive” means a comprehensive and detailed examination beyond the scope of a real estate home inspection that would involve or include, but would not be limited to: dismantling, specialized knowledge or training, special equipment, measurements, calculations, testing, research, analysis, or other means.

U. Definitions

beginning with the letter “U”:

[RESERVED]

V. Definitions

beginning with the letter “V”:

[RESERVED]

W. Definitions

beginning with the letter “W”:

(1) **“Wall**

cladding” means a protective or insulating layer fixed to the outside of a building such as aluminum, brick, EIFS, stone, stucco, vinyl, or wood.

(2) **“Wiring**

method” means the identification of electrical conductors or wires by their general type, such as nonmetallic sheathed cable, armored cable, and knob and tube.

[16.66.1.7 NMAC – N, 1/15/2021; A, 1/14/2022; A, 04/23/2024]

16.66.1.8 OFFICES: The office of the New Mexico home inspectors board will be located in Albuquerque, New Mexico. [16.66.1.8 NMAC – N, 1/15/2021]

16.66.1.9 TELEPHONIC MEETING ATTENDANCE: A board member may participate in a board meeting by means of a conference telephone or similar communications equipment only when it is difficult or impossible for the board member to physically attend the meeting. ~~[A board member attending by means of conference telephone or similar communications equipment must attest in open session during the meeting that his or her in-person attendance was difficult or impossible.]~~ [16.66.1.9 NMAC – N, 1/15/2021; A, 04/23/2024]

16.66.1.10 ADVISORY COMMITTEES: To assist and advise the board in its functions and mission, the board may, at its discretion, utilize advisory committees consisting of board members, volunteers, or both. Any committee serving the board shall have a purely advisory role and shall not have any policymaking authority of any kind. The board has absolute discretion with respect to the number of individuals who may serve on a committee, provided that in no case shall a quorum of the members of the board serve on a committee. The committees the board may create and utilize include, but are not necessarily limited to, the following:

A. Rules Committee: The board may utilize a rules committee to study the board's rules and provide nonbinding recommendations as to future changes and improvements.

B. Complaint Committee: The board may utilize a complaint committee to review disciplinary complaints against licensees and unlicensed practitioners and provide recommendations as to the final disposition of those complaints.

C. Application Committee: The board may utilize an application committee to review applications for licensure and provide recommendations as to whether the board should grant or deny those applications;

D. Continuing Education Committee: The board may utilize a continuing education committee for the purpose of providing nonbinding recommendations as to whether to accept a proposed continuing education course towards licensees' continuing education requirements. [16.66.1.10 NMAC – N, 1/15/2021]

16.66.1.11 LISTS AND STATEMENTS:

A. The board staff shall maintain a list of the names and addresses of all licensees.

B. The board staff shall maintain a list of all persons whose licenses have been suspended or revoked in that particular calendar year.

C. The board staff shall maintain a statement of all funds received and a statement of all disbursements. [16.66.1.11 NMAC – N, 1/15/2021]

16.66.1.12 SIGNATURES: A record, contract, or other document requiring a signature from an authorized person on behalf of the board may be signed by the Chair, Vice-Chair, or Board Administrator. [16.66.1.12 NMAC – N, 1/15/2021]

16.66.1.13 RULE IMPLEMENTATION PERIOD:

A. ~~[Within six months of the effective date of these rules-~~ any] Any individual engaged in the practice of home inspection in New Mexico shall be required to obtain a license issued by the board as a condition of engaging in the future practice of home inspection in New Mexico.

(1) ~~[On the date falling six months after the effective date of these rules or on the date declared by the Board in the event of a state of emergency as~~

~~provided in subsection (2) of this rule, whichever is later]~~ Effective January 15, 2021, any individual engaged in the unlicensed practice of home inspection in New Mexico shall be subject to disciplinary action by the board. The board may also, as it deems appropriate, request the attorney general or district attorney of the judicial district in which the person resides or in which the violation is occurring or has occurred to maintain an action in the name of the state to prosecute the unlicensed practitioner or to enjoin the act or practice.

~~[(2) — Extension of Implementation Period due to State of Emergency: In the event that the Governor declares a state of emergency due to the spread of an infectious disease that extends beyond the six months provided for in this rule, the Board may vote at an open meeting to extend the rule implementation period beyond those initial six months if, in the opinion of the Board, the state of emergency hinders prospective applicants from completing the necessary prerequisites to licensure. Any extension of the rule implementation period shall last no longer than 30 days after the expiration of the state of emergency declared by the Governor.]~~

B. Nothing in this rule permits any person engaged in the practice of home inspection, whether licensed or unlicensed, to violate the code of ethics or standards of conduct as adopted by the board, nor does it permit such a person to violate the Home Inspector Licensing Act. Any action in violation of these rules or the Home Inspector Licensing Act may be considered by the board as part of an individual's application for licensure. [16.66.1.13 NMAC – N, 1/15/2021; A, 04/23/2024]

HISTORY OF 16.66.1 NMAC

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 66 HOME INSPECTOR LICENSING
PART 2 FEES**

16.66.2.1 ISSUING

AGENCY: New Mexico home inspectors board.
[16.66.2.1 NMAC – N, 1/15/2021]

16.66.2.2 SCOPE: All licensed home inspectors, license applicants, other agencies, professional associations, and any member of the general public affected by or interested in home inspectors.
[16.66.2.2 NMAC – N, 1/15/2021]

16.66.2.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to the Home Inspector Licensing Act, Sections 61-24D-1 through 16 NMSA 1978 (2019).
[16.66.2.3 NMAC – N, 1/15/2021]

16.66.2.4 DURATION: Permanent
[16.66.2.4 NMAC – N, 1/15/2021]

16.66.2.5 EFFECTIVE DATE: January 15, 2021, unless a later date is cited at the end of a section.
[16.66.2.5 NMAC – N, 1/15/2021]

16.66.2.6 OBJECTIVE: The objective of Part 2 of Chapter 66 is to establish fees to generate revenues necessary for the home inspector licensing board to carry out its administrative functions.
[16.66.2.6 NMAC – N, 1/15/2021]

16.66.2.7 DEFINITIONS: Refer to Definitions, 16.66.1.7 NMAC.
[16.66.2.7 NMAC – N, 1/15/2021]

16.66.2.8 FEES: The board shall establish, charge and collect:
A. For each initial application for a home inspector license, a fee of \$250;
B. For an initial three-year license, a fee of \$1,000. [~~If a new licensee receives an initial one- or a two-year license pursuant to Part 3 of these rules, this fee shall be prorated as follows:~~
~~(1) For an initial one-year license, a fee of \$333;~~
~~(2) For an~~

~~initial two-year license, a fee of \$666;]~~

C. For renewal of a three-year license, a fee of \$1,000;

D. For reactivation of an inactive license, a fee of \$50;

E. For reactivation of an expired license, a fee of \$100;

F. For reinstatement of a suspended or revoked license, a fee of \$200;

G. For each duplicate license issued because a license is lost or destroyed, a fee of \$50, provided that the licensee shall submit an affidavit attesting to the loss or destruction of the license before the board issues a duplicate license.

H. Administrative fee for licensee list, a fee of \$100
[16.66.2.8 NMAC – N, 1/15/2021; A, 04/23/2024]

16.66.2.9 FEES NON-REFUNDABLE: Fees paid to the board pursuant to 16.66.2.8 NMAC of the board rules are non-refundable. Requests for refunds or exceptions to this rule shall not be considered by the board.
[16.66.2.9 NMAC – N, 1/15/2021]

HISTORY OF 16.66.2 NMAC

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 66 HOME INSPECTOR LICENSING
PART 3 APPLICATIONS AND LICENSES

16.66.3.1 ISSUING AGENCY: New Mexico home inspectors board.
[16.66.3.1 NMAC – N, 1/15/2021]

16.66.3.2 SCOPE: All licensed home inspectors, license applicants, other agencies, professional associations, and any member of the general public affected by or interested in home inspectors.
[16.66.3.2 NMAC – N, 1/15/2021]

16.66.3.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to the Home

Inspector Licensing Act, Sections 61-24D-1 through 16 NMSA 1978 (2019).
[16.66.3.3 NMAC – N, 1/15/2021]

16.66.3.4 DURATION: Permanent.
[16.66.3.4 NMAC – N, 1/15/2021]

16.66.3.5 EFFECTIVE DATE: January 15, 2021, unless a later date is cited at the end of a section.
[16.66.3.5 NMAC – N, 1/15/2021]

16.66.3.6 OBJECTIVE: The objective of Part 3 of Chapter 66 is to set forth provisions governing applications for licensure as a home inspector and examinations.
[16.66.3.6 NMAC – N, 1/15/2021]

16.66.3.7 DEFINITIONS: Refer to Definitions, 16.66.1.7 NMAC.
[16.66.3.7 NMAC – N, 1/15/2021]

16.66.3.8 APPLICATION FOR LICENSURE BY TRAINING AND EXAMINATION:

A. The board shall issue a license to an applicant for licensure by training and examination if the applicant fulfills the following requirements and provides the following information and evidence:
(1) Completion of the board-issued application form;

(2) Payment of the non-refundable application fee in full as provided in Part 2;

(3) Provision to the board of the applicant's fingerprints and all information necessary for the board to complete a state and national criminal background check;

(4) Provision to the board of sufficient documentation to establish that the applicant is at least 18 years of age;

(5) Completion of at least 80 hours of classroom training;

(a) The cumulative total of 80 hours of classroom training must include all of the following subjects:

Site characteristics and exterior;	(i)	(7)	(1)	The
Structural components;	(ii)	Completion of a total of at least 80 hours of field training spent conducting a minimum of 30 parallel home inspections, evidenced by documents including, but not necessarily limited to, a completed board-issued inspection log, pre-inspection agreements, notarized affidavits, and other similarly-reliable evidence;		applicant worked as a home inspector in each of the 24 months immediately preceding January 1, 2020; and
Roofing;	(iii)		(2)	The
Plumbing;	(iv)			applicant performed at least 100 home inspections for compensation in the 24 months immediately preceding January 1, 2020.
Electrical;	(v)		B.	The board shall
Heating, cooling, and air conditioning;	(vi)			issue a home inspector license to applicant for licensure by experience and examination if the applicant fulfills the following requirements and provides the following information and evidence:
Interiors, appliances, and garages;	(vii)	(8)		
Insulation and ventilation;	(viii)	Satisfactory evidence that the applicant has errors and omissions insurance coverage meeting the minimum terms and conditions required by 16.66.[8] 9.9 NMAC; and	(1)	Completion of the board-issued application form;
Fireplaces and fuel burning appliances;	(ix)	(9)		
New Mexico standards of practice and code of ethics;	(x)	Satisfactory evidence that the applicant has professional liability insurance coverage meeting the minimum terms and conditions required by 16.66.[8] 9.10 NMAC.	(2)	Payment of the non-refundable application fee in full as provided in Part 2;
Business practices, including New Mexico rules and regulations, pre-inspection agreements, and report writing.	(xi)	B. For the purposes of this rule, parallel home inspections mean inspections that are either:	(3)	Provision to the board of the applicant's fingerprints and all information necessary for the board to complete a state and national criminal background check;
	(b)	(1) Conducted in New Mexico prior to the effective date of this rule; or	(4)	Provision to the board of sufficient documentation to establish that the applicant is at least 18 years of age and a legal resident of the United States;
All 80 hours of classroom training must be obtained through an educational course that satisfies one of the following criteria:		(2)		
	(i)	Those home inspections at which the applicant, for observational, experiential, and educational purposes, accompanied another home inspector who:	(5)	Passage of a [the national home inspector examination. For the purposes of this rule, the applicant must either have passed the national home inspector examination (NHIE), or the proctored home inspector examination of the international association of certified home inspectors (Inter-NACHI);] board approved examination, subject to the following limitations:
The course is approved or accepted by another governmental state home inspector licensing authority;	(ii)	(a)		
The course is approved by the United States Department of Education or the New Mexico Department of Education; or		Is legally engaged in the practice and profession of home inspection in the jurisdiction in which the home inspection is conducted;	(a)	Evidence of the applicant's examination passage must be in writing and written by the organization or entity that administered the examination; and
The course is designated as pre-licensing education and is certified or approved by any society, institute, council, or association of home inspectors;	(iii)	(b)		
		Has at least two years of experience in the profession of home inspection; and	(b)	The examination must have been proctored and the applicant must provide evidence as to this requirement.
	(c)	(c)		
All 80 hours of classroom training may be completed online;		Has previously completed at least 100 home inspections for compensation. [16.66.3.8 NMAC – N, 1/15/2021; A, 1/14/2022; A, 04/23/2024]	(6)	Satisfactory evidence that the
	(6)	16.66.3.9 APPLICATION FOR LICENSURE BY EXPERIENCE AND EXAMINATION:		
		A. An individual is eligible for licensure by experience and examination if the individual satisfies both of the following criteria:		

applicant has errors and omissions insurance coverage and professional liability insurance coverage meeting the minimum terms and conditions required by 16.66.[8] 9 NMAC; and

(7)

Provision to the board of sufficient documentation and evidence to establish the applicant's home inspector activities in the 24 months immediately preceding January 1, 2020. Such documentation may include, but is not limited to, tax records, notarized affidavits from persons other than the applicant, pre-inspection agreements, and other similarly reliable evidence of the applicant's home inspection activities in the 24 months immediately preceding January 1, 2020.

C. For the purposes of this rule, the phrase "worked as a home inspector in each of the 24 months immediately preceding January 1, 2020" means having personally conducted any business activity directly associated with the profession of home inspection but is not limited to having conducted an actual home inspection. To qualify for licensure by experience and examination, an individual does not need to have personally conducted a home inspection in each of the 24 months immediately preceding January 1, 2020, if that individual conducted another business activity directly associated with the profession of home inspection during each of the 24 months.

[16.66.3.9 NMAC – N, 1/15/2021; A, 1/14/2022; A, 04/23/2024]

16.66.3.10 APPLICATION FOR LICENSURE BY CREDENTIALS:

A. An applicant who holds a license in good standing to practice as a home inspector in another state may be granted a license by virtue of the applicant's credentials if the applicant's resident state license requirements are the same as or similar to the requirements set forth in the Home Inspector Licensing Act as determined by the board.

B. An applicant applying for licensure on the basis

of the applicant's credentials as described in subsection A of this rule shall be required to provide to the board:

(1)

Completion of the board-issued application form;

(2)

Payment of the non-refundable application fee in full as provided in Part 2;

(3)

Provision to the board of the applicant's fingerprints and all information necessary for the board to complete a state and national criminal background check;

(4)

Provision to the board of sufficient documentation to establish that the applicant is at least 18 years of age~~[and a legal resident of the United States];~~

(5)

A certificate, letter, or other documentation from the licensing authority in the applicant's resident state attesting to the fact that the applicant holds a license in good standing to practice as a home inspector in that state;

(6)

Satisfactory evidence that the applicant has errors and omissions insurance coverage meeting the minimum terms and conditions required by 16.66.[8] 9.9 NMAC; and

(7)

Satisfactory evidence that the applicant has professional liability insurance coverage meeting the minimum terms and conditions required by 16.66.[8] 9.10 NMAC.

C.

Pursuant to the Home Inspector Licensing Act, the board may negotiate agreements with other states or licensing jurisdictions to allow for reciprocity regarding licensure. A license granted pursuant to a reciprocity agreement shall be issued upon:

(1)

Completion of the board-issued application form;

(2)

Payment of the non-refundable application fee in full as provided in Part 2;

(3)

Provision to the board of the applicant's

fingerprints and all information necessary for the board to complete a state and national criminal background check;

(4)

Provision to the board of sufficient documentation to establish that the applicant is at least 18 years of age ~~[and a legal resident of the United States];~~

(5)

The applicant's provision to the board of a certificate, letter, or other documentation from the licensing authority in the applicant's resident state attesting to the fact that the applicant holds a license in good standing to practice as a home inspector in that state.

(6)

Satisfactory evidence that the applicant has errors and omissions insurance coverage meeting the minimum terms and conditions required by 16.66.[8] 9.9 NMAC; and

(7)

Satisfactory evidence that the applicant has professional liability insurance coverage meeting the minimum terms and conditions required by 16.66.[8] 9.10 NMAC. [16.66.3.10 NMAC – N, 1/15/2021; A, 04/23/2024]

16.66.3.11 EXAMINATIONS:

A.

Licensure by training and examination: All applicants for licensure by training and examination must ~~[either] pass [the national home inspector examination (NHIE) or the proctored examination of the international association of certified home inspectors (Inter-NACHI)]~~ following the date of application for licensure with the board or have previously passed the national home inspector examination (NHIE) or the proctored Inter-NACHI examination] a board approved examination prior to the date of the applicant's application for licensure.

B.

Licensure by experience and examination: All applicants for licensure by experience and examination must ~~[either:]~~ pass a board approved examination, subject to the following limitations:

~~[(1)]~~ — Pass the national home inspector examination (NHIE); or

~~[(2)]~~ — Have passed prior to the date falling six months after the effective date of these rules the proctored home inspector examination of the international association of certified home inspectors (Inter-NACHI) subject to the following limitations:]

~~[(a)]~~ (1) Evidence of the applicant's examination passage must be in writing and written by the organization or entity that administered the examination; and

~~[(b)]~~ (2) The examination must have been proctored and the applicant must provide evidence as to this requirement.

C. Licensure by credentials: Applicants for licensure by ~~[licensure by]~~ credentials are not required to provide the Board with evidence as to prior examination passage. However, the Board will consider whether the applicant's prior licensing jurisdiction requires the passage of a national examination in determining whether the prior licensing jurisdiction's standards are substantially equivalent to those in New Mexico.

D. It is the applicant's responsibility to make all arrangements ~~[with the examination board of professional home inspectors (EBPHI) to take the NHIE or with Inter-NACHI to take the proctored Inter-NACHI home inspectors examination] to take a board approved examination.~~

E. The applicant shall send the applicant's examination score to the board, provided that the examination score must be in a document originally written by the organization or entity that administered the examination.

~~[(F)]~~ — Any applicant who fails the NHIE may retake the exam at the next available opportunity.]

[16.66.3.11 NMAC – N, 1/15/2021; A, 1/14/2022; A, 04/23/2024]

16.66.3.12 EXPEDITED LICENSURE FOR MILITARY SERVICE MEMBERS, SPOUSES, CHILDREN, AND VETERANS:

A. Application requirements:

(1) Applications for licensure shall be completed on a form provided by the Home Inspectors Board.

(2) The applicant shall provide a complete application that includes the following information:

- (a) applicant's full name;
- (b) current mailing address;
- (c) current electronic mail address, if any;
- (d) date of birth;
- (e) background check, if required; and
- (f) proof as described in subsection C below.

(3) The applicant shall provide the following satisfactory evidence as follows:

- (a) applicant is currently licensed and in good standing in another jurisdiction, including a branch of the United States armed forces;
- (b) applicant has met the minimal licensing requirements in that jurisdiction and the minimal licensing requirements in that jurisdiction are substantially equivalent to the licensing requirements for New Mexico; and

(c) the following documentation:

- (i) for military service member: a copy of military orders;
- (ii) for spouse of military service members: copy of military service member's military orders, and copy of marriage license;
- (iii) for spouses of deceased military service members: copy of decedent's DD 214 and copy of marriage license;

(iv) for dependent children of military service members: a copy of military service member's orders listing dependent child, or a copy of military orders and one of the following: a copy of birth certificate, military service member's federal tax return or other governmental or judicial documentation establishing dependency;

(v) for veterans (retired or separated): a copy of DD 214 showing proof of honorable discharge.

(4) The license shall be issued by the board as soon as practicable but no later than thirty days after a qualified military service member, spouse, dependent child, or veteran files a complete application and provides a background check if required for a license, and any required fees.

(5) Military service members and veterans as defined in Subsection E of Section 61-1-34 NMSA 1978 shall not pay and the board shall not charge a licensing fee for the first three years for a license issued pursuant to this rule.

(6) A license issued pursuant to this section shall be valid for the time period that is specified in the Home Inspectors Licensing Act.

B. Renewal requirements:

(1) A license issued pursuant to this section shall not be renewed unless the license holder satisfies the requirements for renewal set forth in 16.66.4.8 NMAC pursuant to 61-24D-8 NMSA 1978.

(2) As a courtesy, the board will send via electronic mail license renewal notifications to licensees before the license expiration date to the last known email address on file with the board. Failure to receive the renewal notification shall not relieve the licensee of the responsibility of timely renewal on or before the expiration date.

[16.66.3.12 NMAC – N, 1/15/2021; A, 1/14/2022; A, 04/23/2024]

16.66.3.13 [RESERVED]
[16.66.3.13 NMAC – N, 1/15/2021;
Repealed 1/14/2022]

**16.66.3.14 LICENSURE
PROCEDURE:**

A. Upon receipt of a completed application, including all required documentation and fees, the Board's application committee, should the Board choose in its discretion to utilize such a committee, may provide a non-binding and purely advisory recommendation as to whether the Board should grant or deny the application.

B. No license may be issued until the applicant has paid the non-refundable ~~[-but potentially-
prorated as provided in these rules;]~~ initial license fee in full.
[16.66.3.14 NMAC – N, 1/15/2021;
A, 04/23/2024]

**16.66.3.15 POTENTIALLY
DISQUALIFYING CRIMINAL
CONVICTIONS:**

A. Convictions for any of the following offenses, or their equivalents in any other jurisdiction, are disqualifying criminal convictions that may disqualify an applicant from receiving or retaining a license issued by the board. This includes conviction of an offense which if committed in this state, would be deemed a felony under either state or federal law, without regard to its designation elsewhere. The term "conviction" shall include a finding or verdict of guilt, a plea of guilty, or a plea of nolo contendere in a criminal proceeding, regardless of whether the adjudication of guilt or sentence is withheld or not entered thereon or an appeal of the conviction has been sought.

(1) homicide, voluntary or involuntary manslaughter;

(2) trafficking in controlled substances, manufacturing of controlled substances or distribution of controlled substances;

(3) human trafficking, kidnapping, false imprisonment, aggravated assault or aggravated battery;

(4) rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, or other related felony sexual offenses;

(5) crimes involving adult abuse, neglect, or financial exploitation;

(6) crimes involving child abuse or neglect;

(7) crimes involving robbery, larceny, extortion, burglary, possession of burglary tools, destruction of property, criminal damage to property, unlawful or dangerous uses of explosives, breaking and entering, arson, making a bomb scare, tampering with evidence or receiving stolen property;

(8) financial crimes involving fraud, forgery, embezzlement, credit card fraud,

B. The board shall not consider the fact of a criminal conviction as part of an application for licensure unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of this rule.

C. The board shall not deny, suspend or revoke a license on the sole basis of a criminal conviction unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A of this rule.

D. Nothing in this rule prevents the board from denying an application or disciplining a licensee on the basis of an individual's conduct to the extent that such conduct violated the Home Inspector Licensing Act, regardless of whether the individual was convicted of a crime for such conduct or whether the crime for which the individual was convicted is listed as one of the disqualifying criminal convictions listed in Subsection A of this rule.

E. In connection with an application for licensure, the board/ commission shall not use, distribute, disseminate, or admit into evidence at an adjudicatory proceeding criminal records of any of the following:

(1) an arrest not followed by a valid conviction;

(2) a conviction that has been sealed, dismissed, expunged or pardoned;

(3) a juvenile adjudication; or

(4) a conviction for any crime other than the disqualifying criminal convictions listed in Subsection A of this rule.
[16.66.3.15 NMAC – N, 1/14/2022;
A, 04/23/2024]

HISTORY OF 16.66.3 NMAC

**TITLE 16 OCCUPATIONAL
AND PROFESSIONAL
LICENSING
CHAPTER 66 HOME
INSPECTOR LICENSING
PART 4 LICENSE
RENEWALS AND
REACTIVATIONS**

**16.66.4.1 ISSUING
AGENCY:** New Mexico home inspectors board.
[16.66.4.1 NMAC – N, 1/15/2021]

16.66.4.2 SCOPE: All licensed home inspectors, license applicants, other agencies, professional associations, and any member of the general public affected by or interested in home inspectors.
[16.66.4.2 NMAC – N, 1/15/2021]

**16.66.4.3 STATUTORY
AUTHORITY:** These rules are promulgated pursuant to the Home Inspector Licensing Act, Sections 61-24D-1 through 16 NMSA 1978 (2019).
[16.66.4.3 NMAC – N, 1/15/2021]

16.66.4.4 DURATION: Permanent.
[16.66.4.4 NMAC – N, 1/15/2021]

**16.66.4.5 EFFECTIVE
DATE:** January 15, 2021, unless a later date is cited at the end of a section.
[16.66.4.5 NMAC – N, 1/15/2021]

16.66.4.6 OBJECTIVE: The objective of Part 4 of Chapter 66 is to set forth provisions governing renewals of home inspector licenses

and reactivation of expired and inactive licenses.
[16.66.4.6 NMAC – N, 1/15/2021]

16.66.4.7 DEFINITIONS:

Refer to Definitions, 16.66.1.7 NMAC.

[16.66.4.7 NMAC – N, 1/15/2021]

16.66.4.8 LICENSE

RENEWAL:

A. ~~[A]~~ An initial home inspector license shall be valid ~~[during the dates specified in the license itself and as provided in these rules]~~ for three years. Once renewed, all licenses shall be for a duration of three years.

B. Renewal Date: A licensee may apply for renewal of the licensee's license no later than the date specified as the expiration date on the applicant's license.

C. A licensee seeking the renewal of the license shall provide to the board in accordance with the deadlines specified in this rule:

(1) A completed renewal application;
(2) Payment of the non-refundable renewal fee in full as provided in Part 2;

(3) Proof of completion of required continuing education as provided in Part 5;
~~[(4) Provision to the board of all information necessary for the board to complete a state and national criminal background check; and]~~

~~[(5)]~~ (4) Satisfactory evidence that the licensee has errors and omissions insurance coverage and professional liability insurance coverage meeting the minimum terms and conditions required by 16.66.[8] 9 NMAC.

D. The board office will send, either through electronic means or through postal mail, a renewal notice to each licensee no later than 45 days prior to the expiration of the license at the licensee's address on record. Timely renewal of a license is the full and complete responsibility of the licensee. If the licensee does not

receive a renewal notification from the board, it is the responsibility of the licensee to contact the board office.

E. The licensee's failure to receive the board's renewal notification will not exempt the licensee from licensure expiration or late penalty fees.

F. Each licensee is responsible for submitting the required renewal fee by the expiration date irrespective of whether a renewal notice is received by the licensee, and licensees shall not practice on expired licenses under any circumstances.
[16.66.4.8 NMAC – N, 1/15/2021; A, 04/23/2024]

16.66.4.9 INACTIVE STATUS:

A. A license in good standing may, upon written request to the board by the licensee, be placed on inactive status prior to its expiration.

B. A licensee possessing an inactive license may not engage in the practice of home inspection in the State of New Mexico.

C. A license may remain on inactive status indefinitely.

D. A licensee must renew an inactive license no later than the expiration date specified on the license. A licensee seeking to renew an inactive license must complete all continuing education as would a full licensee as provided in Part 5 of these rules.

[16.66.4.9 NMAC – N, 1/15/2021]

16.66.4.10 EXPIRED LICENSES:

A. Former licensees may reactivate an expired license within 90 days of expiration. A licensee who fails to reactivate an expired license within 90 days of expiration must, to obtain licensure, reapply as a new applicant for licensure.

B. For the purposes of this rule, expired licenses include those that have expired after being placed on inactive status by the former licensee.

[16.66.4.10 NMAC – N, 1/15/2021]

16.66.4.11 REACTIVATION OF EXPIRED OR INACTIVE LICENSES:

Former licensees may reactivate an expired or inactive license within the deadlines provided in these rules. A former licensee seeking the reactivation of an expired or inactive license shall provide to the board in accordance with the deadlines specified in these rules:

A. A completed renewal application;

B. Payment of the non-refundable renewal fee in full as provided in Part 2;

C. Payment of the expired license reactivation fee in full as provided in Part 2;

D. Proof of completion of all required continuing education;

~~[E. Provision to the board of all information necessary for the board to complete a state and national criminal background check.]~~

E. Satisfactory evidence that the licensee has errors and omissions insurance coverage and professional liability insurance coverage meeting the minimum terms and conditions required by 16.66.9 NMAC.

[16.66.4.11 NMAC – N, 1/15/2021; A, 04/23/2024]

HISTORY OF 16.66.4 NMAC:

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING

CHAPTER 66 HOME INSPECTOR LICENSING PART 5 CONTINUING EDUCATION

16.66.5.1 ISSUING

AGENCY: New Mexico home inspectors board.

[16.66.5.1 NMAC – N, 1/15/2021]

16.66.5.2 SCOPE: All licensed home inspectors, license applicants, other agencies, professional associations, and any member of the general public affected by or interested in home inspectors.

[16.66.5.2 NMAC – N, 1/15/2021]

16.66.5.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to the Home Inspector Licensing Act, Sections 61-24D-1 through 16 NMSA 1978 (2019).
[16.66.5.3 NMAC – N, 1/15/2021]

16.66.5.4 DURATION: Permanent.
[16.66.5.4 NMAC – N, 1/15/2021]

16.66.5.5 EFFECTIVE DATE: January 15, 2021, unless a later date is cited at the end of a section.
[16.66.5.5 NMAC – N, 1/15/2021]

16.66.5.6 OBJECTIVE: The objective of Part 5 of Chapter 66 is to set forth provisions governing continuing education requirements.
[16.66.5.6 NMAC – N, 1/15/2021]

16.66.5.7 DEFINITIONS: Refer to Definitions, 16.66.1.7 NMAC.
[16.66.5.7 NMAC – N, 1/15/2021]

16.66.5.8 CONTINUING EDUCATION: As provided by the Home Inspector Licensing Act, all home inspectors shall be required to satisfy continuing education requirements in the interest of ensuring the highest quality professional services.

A. As a condition of license renewal, a home inspector licensee shall complete at least 60 hours of board-approved continuing education instruction that is related to the practice of home inspection during each three-year license period as outlined in 16.66.4.8 NMAC. This includes licensees holding initial licenses.

B. At least six hours of continuing education instruction during each three-year license period must be in ethics.

C. A licensee may take continuing education instruction online.

D. Initial licenses of a duration of less than three years: Those licensees possessing initial licenses of a duration of one or two

years shall complete a pro-rated amount of continuing education as follows:

(1) For licensees possessing an initial one year license, 20 hours of board-approved continuing education instruction that is related to the practice of home inspection, including at least two hours of ethics;

(2) For licensees possessing an initial two year license, 40 hours of board-approved continuing education instruction that is related to the practice of home inspection, including at least four hours of ethics.

E. Attendance at one New Mexico home inspector board meeting, rule hearing, or disciplinary hearing for at least three hours, or until the board meeting goes into closed session, or the hearing/meeting ends, whichever comes first. Attendance may be by live meeting/hearing or by live or recorded distance broadcast; but must be documented by signing into and out of the meeting/hearing. In the event of home inspector hardship, approved by the board, the home inspector board may authorize an equivalent to attendance at a board meeting by an online download, attendance at any approved equivalent, or by other approved participation.

[16.66.5.8 NMAC – N, 1/15/2021; A, 04/23/2024]

16.66.5.9 APPROVAL OF CONTINUING EDUCATION HOURS:

A. The board shall automatically accept any educational course towards a licensee's continuing education requirements if the course satisfies one of the following criteria:

(1) The course is approved or accepted by another governmental state home inspector licensing authority;

(2) The course is approved by the United States Department of Education or the New Mexico Department of Education; or

(3) The course is certified or approved by any society, institute, council, or association of home inspectors.

B. A course that does not satisfy the criteria set forth in subsection A of this section may still be accepted by the board through the following process:

(1) A continuing education course may be submitted to the board for approval, by either the course instructor or the licensee, along with the following documentation:

(a) Course description, objectives, and goals;

(b) Course syllabus, including the number of educational hours, detailed timeline, provisions for make-up work, required text, and reading resources, instructional materials and handouts, requirements for successful completion and method of evaluation; and

(c) Documentation as to the course instructor's qualifications, background, and expertise.

(2) Any continuing education course submitted to the board for approval shall be reviewed, along with its supporting documentation, by the board's continuing education committee, which will make a non-binding recommendation to the board as to whether to approve or disapprove the course. The board shall vote on approval of the course, either as part of its consent agenda or otherwise, at its next regularly-scheduled meeting. In the event that the continuing education committee recommends the disapproval of a course, this information shall be conveyed to the course instructor, who may request in writing the opportunity to be heard at the next regularly-scheduled board meeting. Where the instructor has made a request to be heard and the board votes to deny the application, the board will issue a final written decision no later than 15 business days following the board's meeting.

(3) The board, and its application committee, shall consider the following criteria in determining whether to approve a continuing education course:

- (a)
Whether the content of the course is related to the practice of home inspection;
- (b)
Whether the instructor is qualified to teach the course; and
- (c)
Whether the instructor has violated the Home Inspector Licensing Act, the board's rules, or any criminal laws that are substantially related to the practice of home inspection or a failure to pay child support.
[16.66.5.9 NMAC – N, 1/15/2021]

16.66.5.10 CONTINUING EDUCATION AUDITS: The board shall audit ten percent of renewal applications each year, selected anonymously and at random, to verify completion of continuing education. ~~[If the licensee is audited, proof of participation in or presentation of continuing education activity must be submitted along with a renewal form.]~~

A. If a notice of audit is received ~~[with the license renewal notice]~~, the licensee must submit evidence of continuing education hours earned during the current renewal cycle to the board as required in the Home Inspector Licensing Act and the board's rules.

B. ~~[If the licensee is not audited, the licensee must:]~~ All licensees as a condition of renewal, attest to the completion of the required hours of continuing education. The licensee shall, throughout the period of each license, retain all documentation of continuing education attendance for the previous cycle of licensure.

C. The board may audit any licensee's continuing education attendance upon notification to the licensee.

D. Failure to comply with a notice of audit or submit evidence of continuing education hours earned during the current renewal cycle may result in disciplinary action by the board.
[16.66.5.10 NMAC – N, 1/15/2021; A, 04/23/2024]

HISTORY OF 16.66.5 NMAC

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 66 HOME INSPECTOR LICENSING PART 8 DISCIPLINARY PROCEEDINGS

16.66.8.1 ISSUING AGENCY: New Mexico home inspectors board.
[16.66.8.1 NMAC – N, 1/15/2021]

16.66.8.2 SCOPE: All licensed home inspectors, license applicants, other agencies, professional associations, and any member of the general public affected by or interested in home inspectors.
[16.66.8.2 NMAC – N, 1/15/2021]

16.66.8.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to the Home Inspector Licensing Act, Sections 61-24D-1 through 16 NMSA 1978 (2019).
[16.66.8.3 NMAC – N, 1/15/2021]

16.66.8.4 DURATION: Permanent.
[16.66.8.4 NMAC – N, 1/15/2021]

16.66.8.5 EFFECTIVE DATE: January 15, 2021, unless a later date is cited at the end of a section.
[16.66.8.5 NMAC – N, 1/15/2021]

16.66.8.6 OBJECTIVE: The objective of Part 8 of Chapter 66 is to establish the procedures for denying applications for licensure, processing complaints against licensees and applicants, reinstatement of suspended or revoked licenses, and taking disciplinary action against licensees.
[16.66.8.6 NMAC – N, 1/15/2021]

16.66.8.7 DEFINITIONS: Refer to Definitions, 16.66.1.7 NMAC.
[16.66.8.7 NMAC – N, 1/15/2021]

16.66.8.8 GROUNDS FOR DISCIPLINARY ACTION: The following are grounds for taking

disciplinary action against licensees and unlicensed practitioners, and for denying licenses to applicants:

- A.** Substantial misrepresentation;
- B.** Violations of the Home Inspector Licensing Act or any rule of the board, including but not limited to the code of ethics and standards of practice as outlined in Parts 5 and 6 of these rules;
- C.** Offered or delivered compensation, inducement, or reward to the owner of an inspected property or to the broker or the agent for the referral of any business to the home inspector or the home inspector's company;
- D.** A license to perform home inspections revoked, suspended, denied, stipulated or otherwise limited in any state, jurisdiction, territory or possession of the United States or another country for actions of the licensee similar to acts proscribed in Section 61-24D-11 of the Home Inspector Licensing Act;
- E.** Failure to furnish the board, its investigators or its representatives with information requested by the board in the course of an official investigation;
- F.** Performance or offer to perform for an additional fee any repair to a structure on which the home inspector or the home inspector's company has prepared a report at any time during the twelve months immediately prior to the repair or offer to repair, except that a home inspection company that is affiliated with or that retains a home inspector does not violate this paragraph if the home inspection company performs repairs pursuant to a claim made pursuant to the terms of a home inspection contract; or
- G.** Failure to maintain errors and omissions insurance and professional liability insurance as required by the Home Inspector Licensing Act and the rules of the board.

H. Failure to comply with a notice of audit or submit evidence of continuing education hours earned during the current renewal cycle may result in

disciplinary action by the board.
[16.66.8.8 NMAC – N, 1/15/2021; A, 04/23/2024]

16.66.8.9 COMPLAINTS AND RESPONSES:

A. A complaint against a licensee or applicant may be filed with the board by any person, office, or organization. ~~[In order to be considered by the board, a complaint must be sworn and notarized.]~~ The complaint must also contain specific factual allegations of violations of either the Home Inspector Licensing Act ~~[or the]~~, board's rules, or code of ethics.

B. Upon receipt of any complaint alleging that a licensee has violated the Home Inspector Licensing Act ~~[or the]~~, board's rules, or code of ethics, board staff shall forward the complaint to the respective licensee and request a response ~~[within ten business days of receipt]~~. The licensee ("respondent") must provide a response to the board within ten business days of receipt. A respondent's failure to respond to the complaint within this specified time frame shall be grounds for disciplinary action, up to and including revocation of the license at the discretion of the board.

C. The board administrator may authorize the issuance of an investigative subpoena to obtain documents or other evidence relevant to a disciplinary complaint.

D. Subject to applicable exceptions to confidentiality established by law, all complaints, responses, and other disciplinary and investigatory records are public records available for inspection and copying, pursuant to state law, irrespective of the final disposition of the underlying disciplinary complaint.
[16.66.8.9 NMAC – N, 1/15/2021; A, 04/23/2024]

16.66.8.10 REVIEW OF COMPLAINT: All complaints ~~[with, where practicable,]~~ may be reviewed by the board's complaint committee.

A. Should the board, in its discretion, choose to utilize a

complaint committee, the complaint committee shall be responsible for reviewing disciplinary complaints against licensees and applicants and making informal, non-binding recommendations to the board as to their disposition. The complaint committee shall not have any policymaking authority of any kind.

B. The board's complaint committee shall consist of no more than two board members and no more than two other volunteer members who are not members of the board, for a total of no more than four members at any given time.

C. After completing its review of a complaint, the complaint committee shall either recommend that the board take disciplinary action or that it close the case. As part of any recommendation of disciplinary action, the complaint committee may also make recommendations as to the proper amount of discipline (i.e. letter of reprimand, fine, suspension, revocation, etc.), including discipline that might be obtained through a negotiated settlement agreement with the licensee, applicant, or unlicensed practitioner.

[16.66.8.10 NMAC – N, 1/15/2021; A, 04/23/2024]

16.66.8.11 HEARINGS AND DISCIPLINARY PROCEEDINGS:

A. All disciplinary proceedings conducted by the board shall fully conform to the provisions of the Uniform Licensing Act, NMSA 1978, Sections 61-1-1 to -34 (1957, as amended through 2019).

B. In the event that the board seeks to proceed with formal disciplinary action and issue a notice of contemplated action pursuant to the Uniform Licensing Act, the board shall send a request to the litigation division of the New Mexico Office of the Attorney General, which shall, if it elects to do so, serve as the administrative prosecutor on behalf of the board.

C. If a respondent requests an evidentiary hearing in response to a notice of contemplated action, the board chair shall designate a hearing officer to preside over

the hearing. Alternatively, at the discretion of the board chair or upon vote of the board, the entire board may preside over the hearing.

D. Any continuance of an evidentiary hearing requested or stipulated by a respondent shall only be considered by the hearing officer, or board chair if the hearing is conducted by the full board, if the respondent has knowingly, voluntarily, and intelligently signed a waiver of the applicable time limits set forth by the Uniform Licensing Act.

[16.66.8.11 NMAC – N, 1/15/2021]

16.66.8.12 SETTLEMENT AGREEMENTS: As a means of resolving disciplinary complaints against licensees, applicants, and unlicensed practitioners without the time and expense of formal hearings, settlement agreements are encouraged at any stage in the disciplinary process prior to the adjournment of the evidentiary hearing.

A. Prior to the board voting on a disciplinary complaint or the matter being referred to the Office of the Attorney General for administrative prosecution, the board staff may negotiate a settlement agreement with the respondent. However, the board itself must vote to approve the settlement agreement at an open meeting, and no settlement agreement is valid under any circumstances until the board so votes.

B. Prior to the issuance of a notice of contemplated action or the adjournment of an evidentiary hearing, the board's administrative prosecutor may negotiate a settlement agreement with the respondent. However, the board itself must vote to approve the settlement agreement at an open meeting, and no settlement agreement is valid under any circumstances until the board so votes.

C. Following the conclusion of an evidentiary hearing, no settlement agreement shall be considered by the board.

[16.66.8.12 NMAC – N, 1/15/2021]

16.66.8.13 REINSTATEMENT OF SUSPENDED OR REVOKED LICENSES:

A. Reinstatement of Suspended Licenses: Licensees whose licenses have been suspended by the board may apply to reinstate those licenses in accordance with the terms of the suspension. Any licensee seeking reinstatement of a suspended license shall be required to provide to the board:

- (1) A completed board-issued application form;
- (2) Payment of the non-refundable renewal fee in full as provided in Part 2;
- (3) Payment of the non-refundable reinstatement fee in full as provided in Part 2;
- (4) Any evidence necessary to demonstrate that the licensee has satisfactorily completed any terms of the licensee's suspension.

B. Reinstatement of Revoked Licenses: Former licensees whose licenses were revoked by the board may apply to reinstate those licenses no sooner than five years following the date of the order of revocation, unless the former licensee's license was revoked pursuant to the Parental Responsibility Act, in which case the former licensee may apply for reinstatement immediately upon the name of the former licensee's removal from the certified list issued by the New Mexico department of human services. Any former licensee seeking reinstatement of a revoked license shall, pursuant to the terms of the Uniform Licensing Act, carry the burden of demonstrating to the board the former licensee's qualifications for licensure. The former licensee shall be required to provide to the board:

- (1) A completed board-issued application form;
- (2) Payment of the non-refundable renewal fee in full as provided in Part 2;
- (3) Payment of the non-refundable reinstatement fee in full as provided in Part 2;

(4) A letter, affidavit, or other evidence necessary to demonstrate that the former licensee will, in the future, comply with all of the provisions of the Home Inspector Licensing Act and the board's rules.
[16.66.8.13 NMAC – N, 1/15/2021]

16.66.8.14 PARENTAL RESPONSIBILITY ACT: The authority of the board to issue a notice of contemplated action against any licensee or applicant for licensure whose name appears on the certified list issued by the New Mexico department of human services, as provided in NMSA 1978, 40-5A-1, et seq, as deficient in child support payments, and to refer cases in which notices of contemplated action have been issued for administrative prosecution, is delegated to the administrator of the board. This section shall not be construed to deprive the board of its authority and power to issue a notice of contemplated action for any apparent violation of the Parental Responsibility Act, and to refer any such case for administrative prosecution.
[16.66.8.14 NMAC – N, 1/15/2021]

HISTORY OF 16.66.8 NMAC

End of Notices of Rulemaking and Proposed Rules

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 in the State Rules Act. Unless a later date is otherwise provided by law, the effective date of the rule shall be the date of publication in the New Mexico Register. Section 14-4-5 NMSA 1978.

PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

This is an amendment to 20.80.200 NMAC, Sections 30, 60, 70 and 80, effective February 13, 2024.

2.80.200.30 VACANCY ON THE BOARD:

A. In the event any member of the PERA board retires from his or her job, resigns from the board, is removed from the board or dies, except the ex-officio members of the board, that member shall be considered to have resigned from the board and the board shall, by resolution, declare that office vacant as of the date of the adoption of such resolution. Such resolution shall be adopted within 30 days after the board member's retirement, resignation, removal or death. Members of the retirement board shall serve until their successors have qualified.

B. In the event any member of the PERA board, except the ex-officio members of the board, ceases employment with an affiliated public employer, and is not reemployed by an affiliated public employer from the same membership (state, county or non-county municipal) group from which that member was elected within 30 days, that member shall be considered to have resigned from the board. For purposes of 2.80.200.30 NMAC, the term "ceases employment" shall include leave without pay status that extends for more than 12 weeks.

C. The resolution declaring the vacancy shall be publicized immediately in conjunction with a notice inviting eligible individuals to apply for appointment to the position within 30 days of the publication of notice of vacancy. Publication shall be, at the minimum,

by special notice to employees in the affected membership group through their employers. The board shall select the new member from among the interested persons who apply pursuant to the publication of the notice of vacancy. If no applications are received, the board shall entertain nominations by the members present.

D. Any vacancy of member, except ex-officio member, occurring on the board shall be filled by a quorum of the remaining board members, ~~[even though a quorum not be present,]~~ at a regularly scheduled board meeting or special board meeting within 90 days after the adoption of the resolution declaring the vacancy. The member selected to fill the vacancy shall be selected from the membership group, whether state, county or non-county municipal or retired member, which experienced the vacancy. If a vacancy in the municipal membership group is that of a county member, the replacement member shall be a county employee. The selected member must meet all eligibility requirements of elected members and shall be appointed to serve for the remainder of the vacated term.

[2.80.200.30 NMAC - Rp,
2.80.200.30 NMAC, 12/30/2015; A,
02/13/2024]

2.80.200.60 ELECTION OF RETIRED BOARD MEMBERS:

A. During the January monthly meeting, the retirement board shall adopt a resolution specifying when nominating petitions are due to be returned to PERA or an independent contractor hired by PERA to assist with the election. These nominating petitions are due not earlier than six months prior and not later than one month prior to the election for the position of retired board member. The resolution shall

also specify whether the method of voting shall include mailed paper ballots, online electronic ballots or other method approved by the board.

B. [Any] Except as provided in Subsection F of this section, only a retired member who is receiving a disability or normal retirement pension under the Public Employees Retirement Act, Judicial Retirement Act or the Magistrate Retirement Act [is] shall be eligible for election to a retired board member position.

C. Nominating petitions shall be signed only by retired members under the Public Employees Retirement Act, Judicial Retirement Act or the Magistrate Retirement Act. To be eligible for inclusion on the ballot, a candidate must have a minimum of 50 valid nominations by retired members and the candidate shall otherwise be eligible as provided in this section for the retired board member position. A valid nomination shall include a signature, legible printing of the retiree's name, and one of the following:

- (1) the last four digits of the retiree's social security number;
 - (2) the retiree's date of birth;
 - (3) the retiree's PERA identification number.
- A nomination that does not include at least one of these elements [may] shall not be counted. For purposes of this subsection, "signature" shall include an electronic signature, in any digital format, from a single identifiable e-mail address. A retired member may sign more than one nominating petition for different candidates. The five eligible candidates with the highest number of valid nominations shall be included on the ballot and the other or others

shall be eliminated. The names of the five retired members receiving the highest number of valid nominations shall be placed on the election ballot in descending order according to the number of valid signatures received. In case of a nominating tie, the election committee may recommend to the board a method to determine the names and order and the board shall determine the names and order in which [they] the eligible candidates subject to the nominating tie are placed on the ballot by lottery or similar method.

D. In the event any nominee is unable or unwilling to accept a nomination or is otherwise ineligible for the position, that nominee's name shall be removed from the ballot and the resulting vacancy on the ballot shall not be filled. If [the inability or unwillingness] a nominee who is unable or unwilling to accept a nomination [occurs after the ballots have been printed] or a nominee who is ineligible for election is included on the ballots, the election committee and board shall treat all votes cast for that nominee as void.

E. If only one eligible retiree is nominated for a retired board member position, the election shall be cancelled and that retiree shall automatically be declared the winner for the retired board member position pursuant to 2.80.200.80 NMAC.

F. [Only retired members under the Public Employees Retirement Act, Judicial Retirement Act or the Magistrate Retirement Act shall be eligible to participate in the election of retired board members.] Notwithstanding the provisions of Subsection B of this section, a candidate shall be ineligible for election to a retired board member position if the candidate previously served on the board, representing any membership group, and during that previous tenure the candidate was:
(1) subject to three or more separate board resolutions of reprimand and censure; or
(2) removed from the board.

G. The campaign contribution limit of \$25.00 contained in Subsection B of Section 10-11-130.1 NMSA 1978 (2000) shall apply to each four year term retired board member election.

[2.80.200.60 NMAC - Rp, 2.80.200.60 NMAC, 12/30/2015; A, 3/14/2017; A, 12/28/2021; A, 02/13/2024]

2.80.200.70 ELECTION OF NON-RETIRED BOARD MEMBERS:

A. During the January monthly meeting, the retirement board shall adopt a resolution specifying when nominating petitions are due to be returned to PERA or an independent contractor hired by PERA to assist with the election. These nominating petitions are due not earlier than six months prior and not later than one month prior to the election for the position of non-retired board member. The resolution shall also specify whether the method of voting shall include mailed paper ballots, online electronic ballots or other method approved by the board.

(1) [Candidates nominated for any non-retired board member position shall be] Except as provided in Paragraph (2) of this subsection, only non-retired, vested members under the Public Employees Retirement Act, Judicial Retirement Act or the Magistrate Retirement Act shall be eligible for election to a non-retired board member position.

(2) Only state members, including members under the Judicial Retirement Act or the Magistrate Retirement Act, may nominate state member candidates for state board member positions. Only county members may nominate county member candidates for the county board member position. Only non-county municipal members may nominate non-county municipal member candidates for the [remaining] non-county municipal board member positions.

(2) Notwithstanding the provisions of Paragraph (1) of this subsection, a candidate shall be ineligible for

election to a non-retired board member position if the candidate previously served on the board, representing any membership group, and during that previous tenure the candidate was:

(a) subject to three or more separate board resolutions of reprimand and censure; or

(b) removed from the board.

(3) To be eligible for inclusion on the ballot, a candidate must [have] provide nominating petitions to PERA with a minimum of 150 valid nominations of non-retired PERA members from the candidate's membership group [on his or her nominating petition] and the candidate shall otherwise be eligible as provided in this section for that board member position. A valid nomination shall include a signature, a legible printing of the member's name, the member's current employer and one of the following:

(a) the last four digits of the member's social security number;

(b) the member's date of birth; or

(c) the member's PERA identification number.

A nomination that does not include at least one of these elements [may] shall not be counted. For purposes of this subsection, "signature" shall include an electronic signature, in any digital format, from a single identifiable e-mail address. A member may sign more than one nominating petition for different candidates.

(4) The five eligible candidates with the highest number of valid nominations for each non-retired position shall be included on the ballot and the other or others shall be eliminated. The names of the five non-retired members receiving the highest number of valid nominations for a position shall be placed on the election ballot in descending order according to the number of valid signatures received. In case of a nominating tie, the election committee may recommend

to the board a method to determine the names and order and the board shall determine the names and order in which ~~[they]~~ the eligible candidates subject to the nominating tie are placed on the ballot by lottery or similar method.

(5) In the event any nominee is unable or unwilling to accept the nomination, ~~[his or her]~~ or is otherwise ineligible for the position, that nominee's name shall be removed from the ballot and the vacancy on the ballot shall not be filled. If ~~[such a vacancy occurs after the ballots have been printed]~~ a nominee who is unable or unwilling to accept a nomination or a nominee who is ineligible for election is included on the ballots, the election committee and board shall treat all votes cast for that candidate as void.

(6) If only one eligible member is nominated for a non-retired board member position, the election shall be cancelled and that member shall automatically be declared the winner for the non-retired board member position pursuant to 2.80.200.80 NMAC.

(7) All members of record of the membership group for which the election is held shall be eligible to receive a ballot as provided in ~~[Subparagraph (a) of Paragraph (8) below, except that only county members shall vote in elections for the county member position, and shall not be eligible to vote in elections for non-county municipal positions]~~ Paragraphs (8) and (9) of this subsection and members shall only be eligible to vote in those elections in which they are eligible to receive a ballot. The applicable membership group for any member who is no longer a currently employed, contributing employee of an affiliated public employer shall be determined as of the last date on which the member was a currently employed, contributing employee of an affiliated public employer.

(8) For purposes of the election of non-retired board members, "member of record" shall mean the following:

(a) all persons listed in PERA electronic membership history records as members, including members covered under the Public Employees Retirement Act, Judicial Retirement Act or the Magistrate Retirement Act, no more than 60 days prior to the date of mailing ballots;

(b) all persons who have filed with PERA a valid application for membership form 60 days or more prior to the date of mailing ballots;

(c) while members of record shall qualify to receive a ballot, in the case of those new members listed in Subparagraph (b) of Paragraph (8) of Subsection A of 2.80.200.70 NMAC, a written request for a ballot must be made to PERA.

(9) For purposes of the election of non-retired board members:

(a) ballots shall be mailed to all non-county municipal members of record in the case of an election of a non-county municipal board position;

(b) ballots shall be mailed to all county municipal members of record in the case of an election of the county municipal board position; and

(c) ballots shall be mailed to all state members of record in the case of an election of a state board position.

B. The campaign contribution limit of \$25.00 contained in Subsection B of Section 10-11-130.1 NMSA 1978 (2000) shall apply to each four-year term non-retired board member election.

[2.80.200.70 NMAC - Rp, 2.80.200.70 NMAC, 12/30/2015; A, 3/14/2017; A, 12/28/2021; A, 02/13/2024]

2.80.200.80 ELECTIONS: The call of the annual meeting and secret election ballots shall be mailed at least 30 days prior to the annual meeting of the association. Mailed ballots shall be returned to a designated United States post office locked box and picked up by the election committee

or an independent contractor hired by PERA to assist with the election. To be counted, ballots must be returned to the designated United States post office locked box by 12:00 noon on the date set by the association. The call of the annual meeting and secret election ballots may also be made available at least 30 days prior to the annual meeting of the association online via a secure website maintained by an independent contractor hired by PERA to assist with the election or by another method specified in the resolution adopted by the board each January. To be counted, online ballots or votes cast by another approved method must be received by 12:00 noon on the date set by the association. An independent contractor hired by PERA to assist with the election shall assign unique identifiers to members to prevent voting more than one ballot per eligible member.

A. Each ballot shall contain an affirmation of the member's eligibility to vote.

B. Ballots shall be self-proving and shall be counted by the election committee or an independent contractor hired by PERA to assist with the election. The candidate receiving the greatest number of votes shall be declared the winner for each position. In the event of a tie, the election committee may recommend to the board a method to name the winner and the board shall select by lottery or similar method the name of the winner. The election committee or an independent contractor hired by PERA to assist with the election shall report the results of the election to the membership at the annual meeting.

C. Members whose ballots have not been delivered to them may request and receive another ballot if the original ballot is returned by the United States post office undelivered to PERA or an independent contractor hired by PERA to assist with the election prior to the close of the election. Members whose ballots have been mutilated or spoiled may request and receive another ballot when, prior to the close of the election, the original mailed

ballot is returned by the member to PERA or an independent contractor hired by PERA to assist with the election. In addition, PERA or an independent contractor hired by PERA to assist with the election may assign unique identifiers to members and issue replacement ballots using procedures to prevent voting more than one ballot per eligible member.

D. If the election committee or an independent contractor hired by PERA to assist with the election recommends for good cause that the results of the election be invalidated, and the board adopts such recommendation, a new election shall be held as soon as possible thereafter and the annual meeting at which the election results are announced shall be continued until completion of the new election.

E. Insignificant departures from the requirements set forth in these regulations pertaining to the conduct of elections shall not invalidate the election unless the results of the election are proven to have been substantially affected.

F. A member shall be considered to be “qualified” for office pursuant to Subsection D of Section 10-11-130 NMSA 1978 when the board has accepted the election results and the newly-elected member has been sworn into office.
[2.80.200.80 NMAC - Rp, 2.80.200.80 NMAC, 12/30/2015; A, 3/14/2017; A, 02/13/2024]

SUPERINTENDENT OF INSURANCE, OFFICE OF

This is an Emergency Amendment to 13.14.5 NMAC, Sections 10 and 12, effective 1/24/2024.

13.14.5.10

STANDARD EXCEPTIONS IN SCHEDULE B:

A. All commitments shall contain each of the following exceptions in the order stated herein.

(1) Rights or claims of parties in possession not shown by the public records.

(2) Easements, or claims of easements, not shown by the public records.

(3) Encroachments, overlaps, conflicts in boundary lines, shortages in area, or other matter which would be disclosed by an accurate survey and inspection of the premises.

(4) Any lien, claim or right to a lien, for services, labor or materiel heretofore or hereafter furnished, imposed by law and not shown by the public records.

(5) Community property, survivorship, or homestead rights, if any, of any spouse of the insured (or vestee in a leasehold or loan policy).

(6) Water rights, claims or title to water.

(7) Taxes for the year _____, and thereafter. (See 13.14.5.12 NMAC)

(8) Defects, liens, encumbrances, adverse claims or other matters, if any, created first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires for value of record the estate or interest or mortgage thereon covered by this commitment.

B. Additionally, each commitment may contain the following statement when said commitment is issued to commit for both an owner’s policy and a loan policy or a loan policy only: “Exceptions _____ will not appear in the loan policy but will appear in the owner’s policy, if any.”

C. If the commitment is for a loan policy containing a two-year claims made limitation, the following statement must be added: “The loan policy containing a two-year claims made limitation will contain an exception limiting its coverage to two years duration.”

D. Each commitment shall contain the following statement: “Standard exceptions 1, 2, 3, and or 4, may be deleted from a 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.

E. 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.”

~~[F. — Except for the issuance of a U.S. policy form (NM form 34), a 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 G of 13.14.18.9 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.”]~~

[13.14.5.10 NMAC – Rp, 13.14.5.9 NMAC, 1/1/2021; A/E, 1/24/2024]

13.14.5.12 STANDARD

EXCEPTIONS: A policy shall contain in schedule B the standard exceptions 1 through 7, except as otherwise provided by these rules. Said standard exceptions may be preprinted in schedule B and, when specifically authorized, may be deleted by stating, “exceptions _____ are hereby deleted in their entirety”. Standard exception 5 shall refer to “spouse of the vestee” in all owner’s policies and in all situations where the vestee and insured are not the same.

A. Parties in possession - Standard exception 1: Standard exception 1 may be deleted upon satisfactory proof that there are no parties in possession of the property being insured other than

those claiming rights or possession in the property through matters of public record.

B. Unrecorded easements - Standard exception 2: Standard exception 2 may be deleted if a survey of the property being insured satisfactorily shows that there are no easements or claims of easements affecting the insured property other than those shown by the public records.

C. Survey coverage – Standard exception 3:

~~[(H)]~~ Standard exception 3 may be deleted in its entirety if ~~[in only one of two circumstances:~~

~~(a) If the insurer considers the [additional] risk acceptable. [the entire language of this standard exception may be deleted from the policy; or~~

~~(b) If the insurer does not consider the shortage-in-area risk acceptable but considers the remaining additional hazard insurable, the exception may be modified to read “shortages in area.”~~

~~(2) In either circumstance, a] Any additional premium required by these rules must be paid and the title insurer or its title insurance agency must be furnished with a survey of the insured property meeting the insurer’s underwriting standards prior to the deletion.~~

D. Mechanics’ and Materialmen’s Lien Coverage – Standard Exception 4:

(1) In an owner’s policy, standard exception 4 may be deleted in only one of two circumstances:

(a) the statutory period for filing mechanics’ or materialmen’s liens expires prior to the date of the policy;

(b) some or all of the improvements will be “new construction” (or recently completed), and the statutory period for the filing of said liens will not have expired; or

(c) in either circumstance the construction of all improvements on the insured

property must have been fully completed and accepted by the insured owner and the appropriate additional premiums required by these rules must be paid.

(2) In a loan policy, standard exception 4 may be deleted in only one of two circumstances:

(a) if the insurer’s underwriting requirements for evidence of priority have been met; or

(b) 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.

(c) In either circumstance, the appropriate additional premiums as established in a title rate case shall be paid.

E. Spousal rights – Standard exception 5: Standard exception 5 may be deleted from a policy if the vestee named in such policy is not an individual.

F. Water rights – Standard exception 6: Standard exception 6 shall not be modified or deleted.

G. Taxes – Standard exception 7: Standard exception 7 may be modified as follows:

(1) To read: “Taxes for the second half of the year _____, and thereafter.” Such modification shall not be made unless all taxes assessed or assessable through and including the first half of the ad valorem tax year have been paid or are being paid out of funds which are under the control of the title insurance agency or title insurer in an escrow account.

(2) To read: “Taxes for the year _____, and thereafter, not yet due or payable.”

(3) If the ad valorem taxes for the first half of a year have been paid, and taxes for the second half are not yet delinquent, standard exception 7 may be modified, by adding the phrase: “not yet delinquent.”

H. Gap period – Standard exception 8: Standard exception 8 shall not be included in a policy.
[13.14.5.12 NMAC – N, 1/1/2021; A/E, 1/24/2024]

HISTORY OF 13.14.5 NMAC:

Pre-NMAC History.

ID 74-1, Article 10, Chapter 58, Rule 2, Regulations for Filing Title Insurance Forms and Rates, filed 3/7/1974. SCC-85-6, Insurance Department Regulation 30 - Title Insurance, filed 9/6/1985. SCC-86-1, Insurance Department Regulation 30 - Title Insurance, filed 5/9/1986.

History of Repealed Material:

13.14.5 NMAC, Commitments or Binders, filed 5/15/2000, was repealed and replaced by 13.14.5 NMAC, Commitments, effective 1/1/2021.

SUPERINTENDENT OF INSURANCE, OFFICE OF

This is an Emergency Amendment to 13.14.7 NMAC, Section 8, effective 1/24/2024.

13.14.7.8 LOAN POLICIES:

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

B. A loan policy may insure liens on multiple tracts in the same manner as an owner’s policy.

C. A title insurer or title insurance agency issuing a loan policy shall deliver the new owner’s(s) NM form 9, containing all of the required information available at that time and shall ask the owner’s(s) to indicate whether

an owner's policy is declined. The title insurer or title insurance agency shall retain a copy of the completed NM form 9 with a copy of the loan policy for at least two years whenever an owner's policy is declined.

~~[D.]~~ Except as otherwise provided in these rules, NM form 63 is subject to the rules, premiums and charges applicable to loan policies. An insurer or agency may issue NM form 63:

~~(1)~~ if the real property encumbered by the lien of the insured mortgage is one to four family residential property;

~~(2)~~ if the loan secured by the lien of the insured mortgage is not a construction loan or a leasehold interest; and

~~(3)~~ if all applicable premiums are charged for omitting the standard exceptions.

~~E.~~ When an NM form 63 is issued, if required by these rules, or if the insurer does not consider the risk acceptable, schedule B affirmative insurance provisions may be removed or modified by including an exception in the schedule B addendum, and standard exceptions may be added.]

[F] D. Unless otherwise provided in these rules, a loan policy with a leasehold loan endorsement shall contain the same standard exceptions, be subject to the same premium and be subject to deletion of the same standard exceptions as a standard loan policy. A leasehold loan endorsement shall be attached to a loan policy to create a loan policy insuring a leasehold estate.

[13.14.7.8 NMAC – Rp, 13.14.7.8 NMAC, 1/1/2021; A/E, 1/24/2024]

HISTORY OF 13.14.7 NMAC:

Pre-NMAC History.

ID 74-1, Article 10, Chapter 58, Rule 2, Regulations for Filing Title Insurance Forms and Rates, filed 3/7/1974.

SCC-85-6, Insurance Department Regulation 30 - Title Insurance, filed 9/6/1985.

SCC-86-1, Insurance Department Regulation 30 - Title Insurance, filed 5/9/1986.

History of Repealed Material. 13.14.7 NMAC, Loan, Leasehold Loan, and Construction Loan Policies, (filed 5/15/2000), was repealed and replaced by 13.14.1 NMAC, Loan Policies effective 1/1/2021.

SUPERINTENDENT OF INSURANCE, OFFICE OF

This is an Emergency Amendment to 13.14.17 NMAC, Section 12 NMAC, FORM 3 - TRANSACTION REPORT, effective 1/24/2024.

Short form Emergency Amendment, Explanatory note: On Form 3, transaction codes 0004 through 6200, and 6401 through 9100 were not shown as no changes were made to those transaction codes.

13.14.17.12 FORM 3 - TRANSACTION REPORT:

NEW MEXICO TITLE INSURER STATISTICAL REPORT FORM 3 - TRANSACTION REPORT For the Calendar Year Ending December 31, 20__ NEW MEXICO EXPERIENCE ONLY						
Insurer						
						For an Insurer That Charges or Rates Below the Promulgated Rates
NM Form No.	Transaction Code	Transaction Type	No. of Transactions	Direct Premiums Written	Dependent on Basic Premium Rate?	Direct Premiums As If They Had Been Written at Promulgated Rates

[63	6300	Short Form Residential Loan Policy	-	-	Yes]	
-----	------	---	---	---	------	--

TOTAL:				
---------------	--	--	--	--

Crosscheck with Form 1:	
Difference:	

Explanation for Difference (if any):	
--------------------------------------	--

[13.14.17.12 NMAC – Rp, 13.14.17.12 NMAC, 1/1/2021; A/E, 1/24/2024]

SUPERINTENDENT OF INSURANCE, OFFICE OF

This is an Emergency Amendment to 13.14.18 NMAC, repealing and replacing all forms compiled in the Appendix of New Mexico Title Insurance Forms that are incorporated by reference in Section 8, effective 1/24/2024.

**Appendix
13.14.18 NMAC
Continued Next Page**

Appendix 13.14.18 NMAC:**New Mexico Title Insurance Forms**

NM FORM1: OWNER'S POLICY OF TITLE INSURANCE
issued by
BLANK TITLE INSURANCE COMPANY

This policy, when issued by the Company with a Policy Number and the Date of Policy, is valid even if this policy or any endorsement to this policy is issued electronically or lacks any signature.

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 Condition 17.

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 the Date of Policy and, to the extent stated in Covered Risks 9 and 10, after the Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. The Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. Covered Risk 2 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. the failure of a person or Entity to have authorized a transfer or conveyance;
 - iii. a document affecting the Title not properly authorized, created, executed, witnessed, sealed, acknowledged, notarized (including by remote online notarization), or delivered;
 - iv. a 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 the failure to have performed those acts by electronic means authorized by law;
 - vii. a defective judicial or administrative proceeding; or
 - viii. the repudiation of an electronic signature by a person that executed a document because the electronic signature on the document was not valid under applicable electronic transactions law.
 - b. the lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.

NM FORM 2: LOAN POLICY OF TITLE INSURANCE
issued by
BLANK TITLE INSURANCE COMPANY

This policy, when issued by the Company with a Policy Number and the Date of Policy, is valid even if this policy or any endorsement to this policy is issued electronically or lacks any signature.

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 Condition 16.

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 the Date of Policy and, to the extent stated in Covered Risks 11, 13, and 14, after the Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. The Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. Covered Risk 2 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. the failure of a person or Entity to have authorized a transfer or conveyance;
 - iii. a document affecting the Title not properly authorized, created, executed, witnessed, sealed, acknowledged, notarized (including by remote online notarization), or delivered;
 - iv. a 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 the failure to have performed those acts by electronic means authorized by law;
 - vii. a defective judicial or administrative proceeding; or
 - viii. the repudiation of an electronic signature by a person that executed a document because the electronic signature on the document was not valid under applicable electronic transactions law.

NM FORM 6: COMMITMENT FOR TITLE INSURANCE
issued by
BLANK TITLE INSURANCE COMPANY

NOTICE

IMPORTANT—READ CAREFULLY: THIS COMMITMENT IS AN OFFER TO ISSUE ONE OR MORE TITLE INSURANCE POLICIES. ALL CLAIMS OR REMEDIES SOUGHT AGAINST THE COMPANY INVOLVING THE CONTENT OF THIS COMMITMENT OR THE POLICY MUST BE BASED SOLELY IN CONTRACT.

THIS COMMITMENT IS NOT AN ABSTRACT OF TITLE, REPORT OF THE CONDITION OF TITLE, LEGAL OPINION, OPINION OF TITLE, OR OTHER REPRESENTATION OF THE STATUS OF TITLE. THE PROCEDURES USED BY THE COMPANY TO DETERMINE INSURABILITY OF THE TITLE, INCLUDING ANY SEARCH AND EXAMINATION, ARE PROPRIETARY TO THE COMPANY, WERE PERFORMED SOLELY FOR THE BENEFIT OF THE COMPANY, AND CREATE NO EXTRACONTRACTUAL LIABILITY TO ANY PERSON, INCLUDING A PROPOSED INSURED.

THE COMPANY'S OBLIGATION UNDER THIS COMMITMENT IS TO ISSUE A POLICY TO A PROPOSED INSURED IDENTIFIED IN SCHEDULE A IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF THIS COMMITMENT. THE COMPANY HAS NO LIABILITY OR OBLIGATION INVOLVING THE CONTENT OF THIS COMMITMENT TO ANY OTHER PERSON.

COMMITMENT TO ISSUE POLICY

Subject to the Notice; Schedule B, Part I—Requirements; Schedule B, Part II—Exceptions; and the Commitment Conditions, [Blank Title Insurance Company], a [Blank] (the "Company"), commits to issue the Policy according to the terms and provisions of this Commitment. This Commitment is effective as of the Commitment Date shown in Schedule A for each Policy described in Schedule A, only when the Company has entered in Schedule A both the specified dollar amount as the Proposed Amount of Insurance and the name of the Proposed Insured.

If all of the Schedule B, Part I—Requirements have not been met within _____ (*Insert the time period*) after the Commitment Date, this Commitment terminates and the Company's liability and obligation end.

COMMITMENT CONDITIONS

This page is only a part of a NM Form 6 Commitment for Title Insurance. [issued by _____. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; and] Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form].

Modeled on, but not necessarily identical to, ALTA Commitment for Title Policy Form, 2021 v. 01.00 (adopted 07-01-2021)

NM FORM 9: NOTICE OF AVAILABILITY OF OWNER'S TITLE INSURANCE

Buying property identified as:

A Mortgagee's Policy of title insurance insuring the title to the property you are buying or presently own is being issued to your mortgage lender, but that policy does not provide title insurance coverage to you.

You may obtain an Owner's Policy of title insurance that provides title insurance coverage to you. The additional cost to you for an Owner's Policy of title insurance in the amount of \$__ is \$__, if you request it at this time.

If you are uncertain as to whether you should obtain an Owner's Policy of title insurance, you are urged to seek independent advice.

(Name of entity providing notice) _____

- ☐ I/We do request an Owner's Policy of title insurance.
- ☐ I/We do not request an Owner's Policy of title insurance.

Date: _____

Buyer _____

Buyer _____

NM: FORM 11: MULTIPURPOSE ENDORSEMENT

This endorsement is issued as part of

Policy Number _____

Issued by

BLANK TITLE INSURANCE COMPANY

This endorsement is made a part of the policy, binder or commitment and is subject to all 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, binder or commitment and prior endorsements, if any, nor does it extend the effective date of the policy, binder or commitment and prior endorsements or increase the face amount thereof.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

NM FORM 12: CONDOMINIUM — ASSESSMENTS PRIORITY ENDORSEMENT

This endorsement is issued as part of

Policy Number _____

issued by

BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of:

1. The failure of the unit identified in Schedule A and its common elements to be part of a condominium within the meaning of the condominium statutes of the State in which the unit and its common elements are located.
2. The failure of the documents required by the State condominium statutes to comply with the requirements of the statutes to the extent that such failure affects the Title to the unit and its common elements.
3. Present violations of any restrictive covenants that restrict the use of the unit and its common elements and that are contained in the condominium documents or the forfeiture or reversion of Title by reason of any provision contained in the restrictive covenants. As used in Section 3, the words “restrictive covenants” 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 in the Public Records at the Date of Policy and is not excepted in Schedule B.
4. The priority of any lien for charges and assessments provided for in the State condominium statutes and condominium documents at the Date of Policy over the lien of any Insured Mortgage identified in Schedule A.
5. The failure of the unit and its common elements to be entitled by law to be assessed for real property taxes as a separate parcel.
6. Any obligation to remove any improvements that exist at the Date of Policy because of any present encroachments or because of any future unintentional encroachments of the common elements upon any unit or of any unit upon the common elements or another unit.

7. The failure of the Title by reason of a right of first refusal to purchase the unit and its common elements that was exercised or could have been exercised at the Date of 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]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

**NM FORM 13: PLANNED UNIT DEVELOPMENT – ASSESSMENTS PRIORITY
ENDORSEMENT**

**This endorsement is issued as part of
Policy Number _____
issued by
BLANK TITLE INSURANCE COMPANY**

The Company insures against loss or damage sustained by the Insured by reason of:

1. Present violations of any restrictive covenants referred to in Schedule B that restrict the use of the Land or the forfeiture or reversion of Title by reason of any provision contained in the restrictive covenants. As used in this paragraph 1, the words “restrictive covenants” 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 in the Public Records at Date of Policy and is not excepted in Schedule B.
2. The priority of any lien for charges and assessments in favor of any association of owners that are provided for in any document at Date of Policy and referred to in Schedule B over the lien of any Insured Mortgage identified in Schedule A.
3. The enforced removal of any existing structure on the Land (other than a boundary wall or fence) because it encroaches onto adjoining land or onto any easements.
4. The failure of the Title by reason of a right of first refusal to purchase the Land that was exercised or could have been exercised at Date of 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]

[DATE]

BLANK TITLE INSURANCE COMPANY

**By: _____
Authorized Signatory**

**NM FORM 13.1: PLANNED UNIT DEVELOPMENT – CURRENT ASSESSMENTS
ENDORSEMENT**

**This endorsement is issued as part of
Policy Number _____
issued by
BLANK TITLE INSURANCE COMPANY**

The Company insures against loss or damage sustained by the Insured by reason of:

1. Present violations of any restrictive covenants referred to in Schedule B that restrict the use of the Land or the forfeiture or reversion of Title by reason of any provision contained in the restrictive covenants. As used in this paragraph 1, the words “restrictive covenants” 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 in the Public Records at Date of Policy and is not excepted in Schedule B.
2. Any charges or assessments in favor of any association of owners, that are provided for in any document referred to in Schedule B, due and unpaid at Date of Policy.
3. The enforced removal of any existing structure on the Land (other than a boundary wall or fence) because it encroaches onto adjoining land or onto any easements.
4. The failure of the Title by reason of a right of first refusal to purchase the Land that was exercised or could have been exercised at Date of 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]

[DATE]

BLANK TITLE INSURANCE COMPANY

**By: _____
Authorized Signatory**

NM FORM 14: VARIABLE RATE MORTGAGE ENDORSEMENT

This endorsement is issued as part of

Policy Number _____

issued by

BLANK TITLE INSURANCE COMPANY

1. As used in this endorsement, "Changes in the Rate of Interest" mean those adjustments in the rate of interest calculated pursuant to the formula provided in the Insured Mortgage or the loan documents secured by the Insured Mortgage at the Date of Policy.

2. 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 resulting from Changes in the Rate of Interest.

b. the loss of priority of the lien of the Insured Mortgage as security for the unpaid principal balance of the loan, together with interest as changed in accordance with the provisions of the Insured Mortgage or the loan documents secured by the Insured Mortgage, which loss of priority results from Changes in the Rate of Interest.

3. This endorsement does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses, based upon usury law or Consumer Protection Law.

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]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____

[Authorized Signatory]

**NM FORM 15: VARIABLE RATE MORTGAGE—NEGATIVE AMORTIZATION
ENDORSEMENT**

**This endorsement is issued as part of
Policy Number _____
issued by
BLANK TITLE INSURANCE COMPANY**

1. As used in this endorsement, “Changes in the Rate of Interest” mean those adjustments in the rate of interest calculated pursuant to the formula provided in the Insured Mortgage or the loan documents secured by the Insured Mortgage at the Date of Policy.

2. 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 resulting from:

- i. Changes in the Rate of Interest;
- ii. interest on interest; or
- iii. the addition of unpaid interest to the principal balance of the loan.

b. the loss of priority of the lien of the Insured Mortgage as security for the principal balance of the loan, together with interest as changed in accordance with the provisions of the Insured Mortgage or the loan documents secured by the Insured Mortgage, interest on interest, or any unpaid interest which was added to the principal balance in accordance with the provisions of the Insured Mortgage, which loss of priority results from:

- i. Changes in the Rate of Interest;
- ii. interest on interest; or
- iii. the addition of unpaid interest to the principal balance of the loan.

3. This endorsement does not insure against loss or damage, and the Company will not pay costs, attorneys’ fees, or expenses, based upon usury law or Consumer Protection Law.

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]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

NM FORM 16: MANUFACTURED HOUSING UNIT ENDORSEMENT

This endorsement is issued as part of

Policy Number _____

issued by

BLANK TITLE INSURANCE COMPANY

The term “Land” includes the manufactured housing unit located on the land described in Schedule A at Date of 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]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

**NM FORM 16.1: MANUFACTURED HOUSING—CONVERSION—LOAN POLICY
ENDORSEMENT**

**This endorsement is issued as part of
Policy Number _____
issued by
BLANK TITLE INSURANCE COMPANY**

1. The term “Land” includes the manufactured housing unit located on the land described in Schedule A at the Date of Policy.

2. Unless excepted in Schedule B, the Company insures against loss or damage sustained by the Insured if, at the Date of Policy:

- a. A manufactured housing unit is not located on the land described in Schedule A.
- b. The manufactured housing unit located on the land is not real property under the law of the State where the land described in Schedule A is located.
- c. The owner of the land described in Schedule A is not the owner of the manufactured housing unit.
- d. Any lien is attached to the manufactured housing unit as personal property, including:
 - i. a federal, State, or other governmental tax lien;
 - ii. UCC security interest;
 - iii. a motor vehicular lien; or
 - iv. other personal property lien.
- e. The lien of the Insured Mortgage is not enforceable against the Title.
- f. The lien of the Insured Mortgage is not enforceable in a single foreclosure procedure.

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]

[DATE]

BLANK TITLE INSURANCE COMPANY

**By: _____
[Authorized Signatory]**

**NM FORM 16.2: MANUFACTURED HOUSING—CONVERSION—OWNER’S POLICY
ENDORSEMENT**

**This endorsement is issued as part of
Policy Number _____
issued by**

BLANK TITLE INSURANCE COMPANY

1. The term “Land” includes the manufactured housing unit located on the land described in Schedule A at the Date of Policy.
2. Unless excepted in Schedule B, the Company insures against loss or damage sustained by the Insured if, at the Date of Policy:
 - a. A manufactured housing unit is not located on the land described in Schedule A.
 - b. The manufactured housing unit located on the land is not real property under the law of the State where the land described in Schedule A is located.
 - c. The Insured is not the owner of the manufactured housing unit.
 - d. Any lien is attached to the manufactured housing unit as personal property, including:
 - i. a federal, State, or other governmental tax lien;
 - ii. UCC security interest;
 - iii. a motor vehicular lien; or
 - iv. other personal property lien.

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]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

NM FORM 17: REVOLVING CREDIT ENDORSEMENT

This endorsement is issued as part of

Policy Number _____

Issued by

BLANK TITLE INSURANCE COMPANY

Notwithstanding anything to the contrary contained in this policy, the following terms and provisions shall control and apply:

1. This policy insures only to, and liability hereunder is thereby limited to, the extent of the amount of proceeds of the loan secured by the insured mortgage set forth under Schedule A hereof actually disbursed as of the date of this policy, but increases as each subsequent advance or disbursement of loan proceeds is made and decreases as payment of all or a portion of the amount of loan proceeds disbursed is made from time to time, so that any loss payable hereunder shall be limited to the aggregate amount of loan proceeds actually disbursed less the aggregate of all repayments thereof existing at the time a loss occurs hereunder; provided however, that each disbursement of loan proceeds is made in good faith and without knowledge of any defects in, or objections to, title; and provided that the vestee is the owner of the estate or interest covered by this policy at the date any such advances or disbursements are made, and further provided that in no event shall the liability of the Company hereunder exceed the face amount of this policy.

2. The Company hereby assures the insured that any disbursements of such loan proceeds made subsequent to the date of this policy shall be deemed to have been made as of the date of this policy and shall have the same priority as any advances made as of the date of this policy, except as to federal tax liens, liens, encumbrances or other matters, the existence of which are actually known to the insured prior to the date of such disbursement or advance, bankruptcies affecting the estate of the vestee prior to the date of any such advance or disbursement and real estate taxes and assessments arising subsequent to the date of the policy and this endorsement.

This endorsement when countersigned below by an authorized countersignature is made a part of said policy and is subject to the Schedules, Conditions and Stipulations therein except as modified by the provisions hereof.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

NM FORM 20: LEASEHOLD – OWNER’S ENDORSEMENT

This endorsement is issued as part of

Policy Number _____

Issued by

BLANK TITLE INSURANCE COMPANY

1. As used in this endorsement, the following terms shall mean:

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 described in Schedule A.

c. “Leasehold Estate”: the right of possession granted in the Lease for the Lease Term.

d. “Lease Term”: 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”: 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”: the portion of the Lease Term remaining after the Insured has been Evicted.

g. “Tenant Leasehold Improvements”: 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.

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]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
 Authorized Signatory

NM FORM 21: LEASEHOLD – LOAN ENDORSEMENT

This endorsement is issued as part of

Policy Number _____

Issued by

BLANK TITLE INSURANCE COMPANY

1. As used in this endorsement, the following terms shall mean:

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 described in Schedule A.

c. “Leasehold Estate”: the right of possession granted in the Lease for the Lease Term.

d. “Lease Term”: 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”: 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”: the portion of the Lease Term remaining after the Tenant has been Evicted.

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 the policy, the Insured Claimant.

h. “Tenant Leasehold Improvements”: 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.

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]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

NM FORM: 22 PENDING DISBURSEMENT DOWN DATE ENDORSEMENT

This endorsement is issued as part of

Policy Number_____

Issued by

BLANK TITLE INSURANCE COMPANY

Disbursement in the amount of \$ having been made on account of the proceeds of the loan; liability under said policy is hereby recognized to be the amount of \$.

The following matters appear of record since (Date of policy or previous endorsement)

Nothing herein contained shall be construed as extending or changing the effective date of said policy, unless otherwise expressly stated.

This endorsement, when countersigned below by a Validating Signatory, is made a part of said policy and is subject to the Exclusions from Coverage, schedules, conditions and stipulations therein, except as modified by the provisions hereof.

IN WITNESS WHEREOF, the Company has caused its corporate name and seal to be hereunto affixed by its duly authorized officers.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

**NM FORM 23: PENDING IMPROVEMENTS
ENDORSEMENT****This endorsement is issued as part of****Policy Number _____****Issued by****BLANK TITLE INSURANCE COMPANY**

Liability hereunder at date hereof is limited to \$_____, (insert either "the purchase price paid by the insured for the land and existing improvements" or "the value of the land and existing improvements"). Liability hereunder shall increase to the amount of insurance set forth on Schedule A as contemplated improvements are made, so that any loss payable hereunder shall be limited to said sum, plus the amount expended by or on behalf of the insured for additional improvements located upon the land at the time the loss occurs. Any such expenditures made for such additional improvements subsequent to the date of this policy shall be deemed made as of the date of this policy.

This endorsement is made a part of the policy or commitment and is subject to all 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 or commitment and prior endorsements, if any, nor does it extend the effective date of the policy or commitment and prior endorsements; or increase the face amount thereof.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY**By: _____**
Authorized Signatory

NM FORM 24: ASSIGNMENT ENDORSEMENT

**This endorsement is issued as part of
Policy Number _____
issued by
BLANK TITLE INSURANCE COMPANY**

1. The name of the Insured at the Date of Endorsement and referred to in this endorsement as the "Assignee" is amended to read: _____.
2. The Company insures against loss or damage sustained by the Assignee by reason of:
 - a. The failure of the following assignment to vest title to the Insured Mortgage in the Assignee: _____;
 - b. Any modification, partial or full reconveyance, release, or discharge of the lien of the Insured Mortgage recorded on or prior to the Date of Endorsement in the Public Records other than those shown in the policy or a prior endorsement, except: _____.
3. This endorsement does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses, by reason of any claim that arises out of the transaction creating the assignment by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights law that is based on the assignment being a:
 - a. fraudulent conveyance or fraudulent transfer;
 - b. voidable transfer under the Uniform Voidable Transactions Act; or
 - c. preferential transfer.
4. This endorsement shall be effective provided that, at the Date of Endorsement:
 - a. the note or notes secured by the lien of the Insured Mortgage have been properly endorsed and delivered to the Assignee; or
 - b. if the note or notes are transferable records, the Assignee has "control" of the single authoritative copy of each "transferable record" as these terms are defined by applicable electronic transactions laws.

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]

[DATE]

BLANK TITLE INSURANCE COMPANY

**By: _____
[Authorized Signatory]**

NM FORM 24.1: ASSIGNMENT AND DATE DOWN ENDORSEMENT

**This endorsement is issued as part of
Policy Number _____
issued by
BLANK TITLE INSURANCE COMPANY**

1. The name of the Insured at the Date of Endorsement and referred to in this endorsement as the "Assignee" is amended to read: _____.
2. The Company insures against loss or damage sustained by the Assignee by reason of:
 - a. The failure of the following assignment to vest title to the Insured Mortgage in the Assignee: _____;
 - b. Any liens for taxes or assessments affecting the Title that are due and payable on the Date of Endorsement, except: _____;
 - c. Lack of priority of the lien of the Insured Mortgage over defects, liens, or encumbrances other than those shown in the policy or a prior endorsement, except: _____;
 - d. Notices of federal tax liens or notices of pending bankruptcy proceedings affecting the Title and recorded subsequent to the Date of Policy in the Public Records and on or prior to the Date of Endorsement, except: _____;
 - e. Any modification, partial or full reconveyance, release or discharge of the lien of the Insured Mortgage recorded on or prior to Date of Endorsement in the Public Records other than those shown in the policy or a prior endorsement, except: _____.
3. This endorsement does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses, by reason of any claim that arises out of the transaction creating the assignment by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights law that is based on the assignment being a:
 - a. fraudulent conveyance or fraudulent transfer;
 - b. voidable transfer under the Uniform Voidable Transactions Act; or
 - c. preferential transfer.
4. This endorsement shall be effective provided that, at the Date of Endorsement:
 - a. the note or notes secured by the lien of the Insured Mortgage have been properly endorsed and delivered to the Assignee; or
 - b. if the note or notes are transferable records, the Assignee has "control" of the single authoritative copy of each "transferable record" as these terms are defined by applicable electronic transaction laws.

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]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
 [Authorized Signatory]

NM FORM 25: ADDITIONAL ADVANCE ENDORSEMENT

This endorsement is issued as part of
Policy Number _____
Issued by
BLANK TITLE INSURANCE COMPANY

The provisions of said policy are hereby modified and amended as of the date hereof as to the following matters and none other:

(1) That, except as otherwise expressly provided herein, there are no liens, encumbrances or other matters shown by the public records, affecting said estate or interest, other than those shown in said policy, except: (Insert word "None" or list liens and encumbrances, showing as subordinate where appropriate).

(2) That there are no subsisting tax or assessment liens which are prior to the mortgage referred to in Schedule A, other than those shown in said policy, except: (Insert word "None" or list tax or assessment items).

(3) That, as shown by the public records, the title to said estate or interest is vested in the vestee shown in Schedule A.

(4) That the advance hereinafter referred to is secured by the mortgage referred to in Schedule A; that, as shown by the public records, said mortgage as to such advance is prior to any liens, encumbrances and other matters affecting the said estate or interest other than those shown in Schedule B as prior to said mortgage and in paragraph (2) herein, except: (Insert word "None" or list liens, etc.).

(5) The advance referred to in this endorsement is: Insert a description of the advance made or being made, and if appropriate, a reference to the document(s) under which the advance is made or being made.

(6) The amount of insurance set out on Schedule A is amended to be: \$ _____ .

The Company hereby insures against loss or damage which the Insured shall sustain in the event that the assurances of the Company herein shall prove to be incorrect.

This endorsement is made a part of the policy or commitment and is subject to all 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 or commitment and prior endorsements, if any, nor does it extend the effective date of the policy or commitment and prior endorsements or increase the face amount thereof.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

NM FORM 26: PARTIAL COVERAGE ENDORSEMENT

This endorsement is issued as part of

Policy Number_____

Issued by

BLANK TITLE INSURANCE COMPANY

Even though the mortgage herein insured is for a greater amount, this policy having been issued for the value of the land and improvements rather than the amount of the mortgage as the insured has advised the Company there is other collateral securing the loan, liability hereunder is limited to \$_____.

This endorsement is made a part of the policy or commitment and is subject to all the terms and provisions thereof and of any prior endorsement thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy or commitment and prior endorsements, if any, nor does it extend the effective date of the policy or commitment and prior endorsements or increase the face amount thereof.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

NM FORM: 28: NON-IMPUTATION – FULL EQUITY TRANSFER ENDORSEMENT:

This endorsement is issued as part of

Policy Number_____

Issued by

BLANK TITLE COMPANY

The Company agrees that it will not assert the provisions of Exclusions from Coverage 3(a), (b), or (e) to deny liability for loss or damage otherwise insured against under the terms of the policy solely by reason of the action or inaction or Knowledge, as of Date of Policy, of

[identify existing or contributing partner(s) of the insured partnership entity, member(s), or manager(s) of the insured limited liability company entity, or officer(s) and/or director(s) of the insured corporate entity]

whether or not imputed to the Insured by operation of law, provided

[identify the “incoming” partners, members, or shareholders]

acquired the Insured as a purchaser for value without Knowledge of the asserted defect, lien, encumbrance, adverse claim, or other matter insured against by the 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 to it.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

NM FORM 28.1: NON-IMPUTATION – ADDITIONAL INTEREST ENDORSEMENT:

This Endorsement is issued as part of

Policy Number_____

Issued by

BLANK TITLE COMPANY

For purposes of the coverage provided in this endorsement

[identify the “incoming” partner, member, or shareholder]

(“Additional Insured”) is added as an Insured under the policy. By execution below, the Insured named in Schedule A acknowledges that any payment made under this endorsement shall reduce the Amount of Insurance as provided in Section 10 of the Conditions.

The Company agrees that it will not assert the provisions of Exclusions from Coverage 3(a), (b), or (e) to deny liability for loss or damage otherwise insured against under the terms of the policy solely by reason of the action or inaction or Knowledge, as of Date of Policy, of

[identify, as applicable, the existing and/or exiting partner(s) of the insured partnership entity, member(s), or manager(s) of the insured limited liability company entity, or officer(s) and/or director(s) of the insured corporate entity]

whether or not imputed to the Additional Insured by operation of law, to the extent of the percentage interest in the Insured acquired by Additional Insured as a purchaser for value without Knowledge of the asserted defect, lien, encumbrance, adverse claim, or other matter insured against by the 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.

AGREED AND CONSENTED TO:

INSURED

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

NM FORM 28.2: NON-IMPUTATION – PARTIAL EQUITY TRANSFER ENDORSEMENT

This endorsement is issued as part of
Policy Number
Issued by
BLANK TITLE COMPANY

[Incoming partner, member, or shareholder, as the named insured in its own policy, where the vestee of insured estate or interest identified in Schedule A is a partnership, limited liability company, or corporation]

The Company agrees that it will not assert the provisions of Exclusions from Coverage 3(a), (b), or (e) to deny liability for loss or damage otherwise insured against under the terms of the policy solely by reason of the action or inaction or Knowledge, as of Date of Policy, of

[identify, as applicable, the existing and/or exiting partner(s) of the vestee partnership entity, member(s) or manager(s) of the vestee limited liability company entity, or officer(s) and/or director(s) of the vestee corporate entity]

whether or not imputed to the entity identified in paragraph 3 of Schedule A or to the Insured by operation of law, but only to the extent that the Insured acquired the Insured's interest in entity as a purchaser for value without Knowledge of the asserted defect, lien, encumbrance, adverse claim, or other matter insured against by the 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 to it.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

NM FORM 29: ENVIRONMENTAL PROTECTION LIEN ENDORSEMENT

This endorsement is issued as part of

Policy Number _____

issued by

BLANK TITLE INSURANCE COMPANY

1. The insurance afforded by this endorsement is only effective if the Land is used or is to be used primarily for residential purposes.

2. The Company insures against loss or damage sustained by the Insured by reason of lack of priority of the lien of the Insured Mortgage over:

a. any environmental protection lien that, at the Date of Policy, is recorded in those records established under State statutes at the Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge, or is filed in the records of the clerk of the United States district court for the district in which the Land is located, except as set forth in Schedule B; or

b. any environmental protection lien provided by any State statute in effect at the Date of Policy, except environmental protection liens provided by the following State statutes:

[Drafting Instruction: List the relevant State statutes, if any; if none, specify "none".]

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]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

NM FORM 30: CONDOMINIUM—CURRENT ASSESSMENTS ENDORSEMENT

**This endorsement is issued as part of
Policy Number _____
issued by
BLANK TITLE INSURANCE COMPANY**

The Company insures against loss or damage sustained by the Insured by reason of:

- 1.** The failure of the unit identified in Schedule A and its common elements to be part of a condominium within the meaning of the condominium statutes of the State in which the unit and its common elements are located.
- 2.** The failure of the documents required by the State condominium statutes to comply with the requirements of the statutes to the extent that such failure affects the Title to the unit and its common elements.
- 3.** Present violations of any restrictive covenants that restrict the use of the unit and its common elements and that are contained in the condominium documents or the forfeiture or reversion of Title by reason of any provision contained in the restrictive covenants. As used in Section 3, the words “restrictive covenants” 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 in the Public Records at the Date of Policy and is not excepted in Schedule B.
- 4.** Any charges or assessments provided for in the State condominium statutes and condominium documents due and unpaid at the Date of Policy.
- 5.** The failure of the unit and its common elements to be entitled by law to be assessed for real property taxes as a separate parcel.
- 6.** Any obligation to remove any improvements that exist at the Date of Policy because of any present encroachments or because of any future unintentional encroachments of the common elements upon any unit or of any unit upon the common elements or another unit.
- 7.** The failure of the Title by reason of a right of first refusal to purchase the unit and its common elements that was exercised or could have been exercised at the Date of 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]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
 [Authorized Signatory]

NM FORM 31: OWNER'S LEASEHOLD CONVERSION ENDORSEMENT

**This endorsement is issued as part of
Policy Number _____
Issued by
BLANK TITLE INSURANCE COMPANY**

Effective on and after____, the Conditions and Stipulations of said policy are hereby amended in the following particulars:

Section 1 of the Conditions and Stipulations is hereby amended by deleting therefrom subparagraph (h).

Section 7 subparagraph (b) is amended to read as follows:

(b) In the event the Amount of Insurance stated in Schedule A at the Date of Policy is less than 80 percent of the value of the insured estate of interest or the full consideration paid for the land, whichever is less, or if subsequent to the Date of Policy an improvement is erected on the land which increases the value of the insured estate or interest by at least 20 percent over the amount of insurance stated in Schedule A, then this policy is subject to the following:

(i) where no subsequent improvement has been made, as to any particular loss, the Company shall only pay the loss pro rata in the proportion that the amount of insurance at Date of Policy bears to the total value of the insured estate or interest at Date of Policy; or

(ii) where a subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that 120 percent of the Amount of Insurance stated in Schedule A bears to the sum of the Amount of Insurance stated in Schedule A and the amount expended for the improvement.

The provisions of this paragraph shall not apply to costs, attorneys' fees and expenses for which the Company is liable under this policy, and shall only apply to that portion of any loss which exceeds, in the aggregate, 10 percent of the Amount of Insurance stated in Schedule A."

Section 14, Valuation of Estate or Interest Insured, And Section 15, Miscellaneous Items of Loss, are hereby deleted and Sections 16, 17, 18 and 19 are hereby renumbered 14, 15, 16 and 17 respectively.

This endorsement when countersigned below by a validating signatory, is hereby 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]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

NM FORM 33: CHANGE OF NAME ENDORSEMENT

This endorsement is issued as part of

Policy Number_____

Issued by

BLANK TITLE INSURANCE COMPANY

Wherever in the said policy the name (Old Name) is used, the name (Blank Title Insurance Company) is hereby substituted.

In Witness Whereof, the (Blank Title Insurance Company) has, by its President, executed this Change of Name

Endorsement as of the _____ day of _____.

Dated: _____

BLANK TITLE INSURANCE COMPANY

Address_____

By: _____, President

By: _____, Authorized Signatory

By: _____, Secretary

Note: This endorsement shall not be used after the 60th day from the first date the new name is used. Thereafter, all forms shall incorporate the new name.

NM FORM 34 - U.S. POLICY FORM**UNITED STATES OF AMERICA POLICY OF TITLE INSURANCE**

**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]

BLANK TITLE INSURANCE COMPANY

BY: _____ **PRESIDENT**

BY: _____ **SECRETARY**

NM FORM 35: NOTICE TO PURCHASER INSURED

READ THIS NOTICE TO FAMILIARIZE YOURSELF WITH ADDITIONAL COVERAGES AVAILABLE

The New Mexico 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, , 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 \$50 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, 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 _____

NM FORM 41 - LIMITED PRE-FORECLOSURE TITLE INSURANCE POLICY**LIMITED PRE-FORECLOSURE POLICY****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 B

This policy does not insure against loss or damage by reason of:

(List matters identified in accordance with the Covered Risks.)

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
 Authorized Signatory

NM FORM 42: LIMITED PRE-FORECLOSURE DATE-DOWN ENDORSEMENT

**This endorsement is issued as part of
Policy Number
Issued by
BLANK TITLE 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]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

NM FORM 43: INSURING AROUND ENDORSEMENT

This endorsement is issued as part of

Policy Number_____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company hereby insures the insured against loss or damage covered or to be covered under the Policy Insuring Agreements which the insured shall sustain in connection with Item____, Schedule B.

This endorsement is made a part of the commitment or policy. It is subject to all the terms of the commitment or policy and prior endorsements. Except as expressly stated on this endorsement, the terms, dates and amounts of the commitment or policy and prior endorsements are not changed.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

NM FORM 44: REVOLVING CREDIT – INCREASED CREDIT LIMIT ENDORSEMENT

This endorsement is issued as part of
Policy Number _____
Issued by
BLANK TITLE INSURANCE COMPANY

The provisions of said Policy are hereby modified and amended as of the date hereof as to the following matters and none other:

The insurance afforded by this endorsement is only effective if the land is used or is to be used primarily for one to four family residential purposes.

A. Upon the representation and assurance by the Insured, that the Insured has increased the borrower's credit limit under the _____ ("Agreement") in the sum of \$_____, and that this sum is secured by the mortgage referred to in Schedule A, the Company hereby insures the Insured against loss which the Insured shall sustain by reason of:

(1) Title to the estate or interest being vested at date of this endorsement, in other than the vestee(s) shown in Paragraph 3 of Schedule A, except as affected by the following matters: _____

(2) Priority over the mortgage, insofar as the same secures the increased credit limit, of any lien or encumbrance existing at the date of this endorsement which is not shown or referred to in Schedule B as prior to the mortgage nor excluded from coverage in the Conditions and Stipulations or Schedule of Exclusion from Coverage, except as affected by the following matters: _____

(3) Any release, full or partial, or modification or subordination of the mortgage shown by the public records at the date of this endorsement, except for the following instruments: _____

B. The assurances, terms and exceptions contained in the previously issued revolving credit endorsement attached to the policy shall apply to subsequent advances made under the increased credit limit above, except that no coverage is afforded as to matters referred to in Paragraph A above.

The total liability of the Company under said Policy and any endorsements therein shall not exceed, in the aggregate, the face amount of said Policy, plus the amount of the increased credit limit (which together now constitute the new "face amount" of the policy) and costs which the Company is obligated under the conditions and stipulations thereof to pay.

This endorsement is made a part of the Policy and is subject to all 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 or commitment and prior endorsements, if any, nor does it extend the effective date of the Policy or commitment and prior endorsements.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

NM FORM 45: RESIDENTIAL LIMITED COVERAGE JUNIOR LOAN POLICY
issued by
BLANK TITLE INSURANCE COMPANY

This policy, when issued by the Company with a Policy Number and the Date of Policy, is valid even if this policy or any endorsement to this policy is issued electronically or lacks any signature.

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 Condition 16.

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN THE SCHEDULE, AND THE CONDITIONS, and provided that the Land is improved with an existing one-to-four family residence or residential condominium unit, [Blank Title Insurance Company], a [Blank] corporation (the "Company"), insures as of the 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, recorded in the Public Records as of the Date of Policy, purporting to vest the Title.
2. The description of the Land in the Schedule not being the same as that contained in the last document, recorded in the Public Records as of the Date of Policy, purporting to vest the Title.
3. A Monetary Lien recorded in the Public Records as of the Date of Policy.
4. Any ad valorem taxes or assessments of any governmental taxing authority that constitute a lien on the Title and that, as of the Date of Policy, appear in the official ad valorem tax records where the Land is located.

NM FORM 46: JR 1 ENDORSEMENT

**This endorsement is issued as part of
Policy Number _____
issued by
BLANK TITLE INSURANCE COMPANY**

1. This endorsement is subject to the Exclusions from Coverage, the Exceptions contained in the Schedule and the Conditions in the policy.

2. Date of Endorsement: _____ [or the date of recording of the Identified Mortgage, whichever is later].

3. The Identified Mortgage means: *(describe the Identified 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 the Date of Policy and on or prior to the Date of Endorsement, except:

- [i.
- ii..
- iii.]

b. Any Monetary Lien other than the Identified Mortgage, recorded in the Public Records subsequent to the Date of Policy and on or prior to the Date of Endorsement except:

- [i.
- ii..
- iii.]

5. If the box is checked, this policy incorporates the NM FORM 47 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]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

NM FORM 47: JR 2 ENDORSEMENT

**This endorsement is issued as part of
Policy Number _____
issued by
BLANK TITLE INSURANCE COMPANY**

1. This endorsement is subject to the Exclusions from Coverage, the Exceptions contained in the Schedule and the Conditions in the policy.
2. This endorsement applies if:
 - a. The Identified Mortgage creates a valid and enforceable lien on the Title;
 - b. The borrower named in the Identified Mortgage ("Borrower") is the owner of the Title at the date an advance is made pursuant to the note or agreement secured by the Identified Mortgage;
 - c. The Identified Mortgage secures repayment of future advances; and
 - d. The policy has been endorsed with an NM FORM 46 JR 1.
3. The Company insures against loss or damage sustained by the Insured by reason of:
 - a. A future advance secured by the Identified Mortgage not having the same priority over a Monetary Lien as the Identified 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 Identified Mortgage resulting from the provisions of the Identified Mortgage which provide for changes in the rate of interest.
 - c. Loss of priority of the lien of the Identified Mortgage resulting from changes in the rate of interest calculated in accordance with the formula provided in the Identified Mortgage at the date it is recorded in the Public Records.
4. This endorsement does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses, resulting from:
 - a. The failure of:

i. the Borrower to own the Title;
ii. the Identified Mortgage to create a valid and enforceable lien on the Title;
iii. the Identified Mortgage to have priority, except to the extent expressly provided in Section 3 of this endorsement; or

b. The application of:

- i. usury law,
ii. Consumer Protection Law, or
iii. federal bankruptcy, state insolvency, or similar creditors' rights law.

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]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

**NM FORM 49: NOTICE OF AVAILABILITY OF FUTURE INCREASE IN COVERAGE AND
POTENTIAL PREMIUM DISCOUNT FOR FUTURE POLICIES****NOTICE OF AVAILABILITY OF FUTURE INCREASE IN COVERAGE AND POTENTIAL
PREMIUM DISCOUNTS FOR FUTURE POLICIES**

(To be attached to all policies issued on one to four family residential properties)

(Name, Address, and Telephone Number of Agency/Insurer)

A. Notice of Availability of Future Increase in Coverage.

**READ THIS NOTICE TO FAMILIARIZE YOURSELF WITH IMPORTANT INFORMATION
REGARDING YOUR TITLE INSURANCE COVERAGE**

An Owner's Policy may be endorsed to reflect the current value of the estate insured (upon payment of the current basic premium according to the schedule less the amount previously paid for said policy) if the insurer's underwriting standards are met; provided, however, that the effective date of the policy shall remain unchanged and no affirmative coverages or down dates shall be added to the policy.

PLEASE KEEP THIS TITLE INSURANCE POLICY. IT IS AN IMPORTANT LEGAL DOCUMENT. AS YOU REVIEW IT FROM TIME TO TIME, BE 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.

B. Notice of Potential Premium Discounts for Future Policies.

**YOUR TITLE POLICY IS AN IMPORTANT LEGAL DOCUMENT AND SHOULD BE STORED
IN A SAFE, SECURE PLACE. YOUR TITLE POLICY MAY ENTITLE YOU TO VALUABLE
DISCOUNTS IN THE FUTURE.**

New Mexico title insurance premium rates are set every other year or approved by the New Mexico Superintendent of Insurance. These are the rates that must be charged for title insurance policies, title binders, and title policy endorsements by title insurance companies doing business in New Mexico. The Superintendent of Insurance does not regulate other title company charges.

Subject to limited exception, all premiums for title insurance policies are based on the amount of insurance coverage. Larger policies cost more than smaller policies.

In the future, there may be certain discounts from the standard owner's policy rates available to you, if your transaction meets the requirements for any particular discount. These current discounts are summarized below:

Notice of Availability of Future Increase in Coverage and Potential Premium Discount for Future Policies NM FORM 49

Owner Policy Discounts:

Reissue Discount. If you have an existing owner's policy of title insurance on the property when you sell your property, then a discount may apply based upon the age of the prior policy and the amount of the prior policy pursuant to 13.4.6.18 NMAC.

Subdivider/Builder Rate. Subject to certain conditions, if you are the seller of multiple lots within the same subdivision, you may be entitled to a 25% discount off the standard owner's policy rate, pursuant to 13.14.6.20 NMAC and 13.14.9.23 NMAC.

Quick Resale Rate. If you purchase an owner's policy within 30 days of the issuance of a prior policy on the same property, the cost of the new policy is 30% of the standard owner's policy rate, pursuant to 13.14.9.32 NMAC.

Loan Policy Discounts:

General Lender Policy Rate. Loan policies are generally 90% of the cost of the full basic rate of the owner's policy, unless one of the discounts available for loan policies applies, pursuant to 13.14.9.22 NMAC.

Simultaneous Issue Rate. If a lender title policy is issued simultaneously with the issuance of an owner's policy, the cost of the lender policy (up to the face amount of the owner's policy) is \$100.00, pursuant to 13.14.9.30 NMAC.

Refinance Transactions. If you are refinancing an existing mortgage loan, a discount may apply on the new loan policy, pursuant to 13.14.9.39 NMAC and 59A-30-6.1 NMSA.

Second or Subsequent Mortgages. If you produce an owner's policy of title insurance, you may be entitled to a discount called the "subsequent issue" rate, on future transactions involving second or subsequent mortgages pursuant to 13.14.9.36 NMAC.

ON YOUR NEXT TRANSACTION, ASK YOUR ESCROW OFFICER TO CONFIRM THAT YOU HAVE RECEIVED ANY AND ALL DISCOUNTS TO WHICH YOU ARE ENTITLED UNDER NEW MEXICO'S TITLE INSURANCE LAW AND REGULATIONS.

**NM 50: RESTRICTIONS, ENCROACHMENTS, MINERALS – LOAN POLICY
ENDORSEMENT**

**The endorsement is issued as part of
Policy Number _____
Issued by
Blank Title Insurance Company**

The Company insures the owner of the Indebtedness secured by the Insured Mortgage against loss or damage sustained by reason of:

1. The existence, at Date of Policy, of any of the following:
 - a. Covenants, conditions, or restrictions under which the lien of the Insured Mortgage can be divested, subordinated, or extinguished, or its validity, priority, or enforceability impaired.
 - b. Unless expressly excepted in Schedule B
 - i. Present violations on the Land of any enforceable covenants, conditions, or restrictions, and any existing improvements on the land described in Schedule A that violate any building setback lines shown on a plat of subdivision recorded or filed in the Public Records.
 - ii. Any instrument referred to in Schedule B as containing covenants, conditions, or restrictions on the Land that, in addition, (A) establishes an easement on the Land, (B) provides a lien for liquidated damages, (C) provides for a private charge or assessment, (D) provides for an option to purchase, a right of first refusal, or the prior approval of a future purchaser or occupant.
 - iii. Any encroachment of existing improvements located on the Land onto adjoining land, or any encroachment onto the Land of existing improvements located on adjoining land.
 - iv. Any encroachment of existing improvements located on the Land onto that portion of the Land subject to any easement excepted in Schedule B.
 - v. Any notices of violation of covenants, conditions, or restrictions relating to environmental protection recorded or filed in the Public Records.
2. Any future violation on the Land of any existing covenants, conditions, or restrictions occurring prior to the acquisition of title to the estate or interest in the Land by the Insured, provided the violation results in:
 - a. the invalidity, loss of priority, or unenforceability of the lien of the Insured Mortgage; or
 - b. the loss of Title if the Insured shall acquire Title in satisfaction of the Indebtedness secured by the Insured Mortgage.
3. Damage to existing improvements, including lawns, shrubbery, or trees:

a. that are located on or encroach upon that portion of the Land subject to any easement excepted in Schedule B, which damage results from the exercise of the right to maintain the easement for the purpose for which it was granted or reserved;

b. resulting from the future exercise of any right to use the surface of the Land for the extraction or development of minerals excepted from the description of the Land or excepted in Schedule B.

4. Any final court order or judgment requiring the removal from any land adjoining the Land of any encroachment excepted in Schedule B.

5. Any final court order or judgment denying the right to maintain any existing improvements on the Land because of any violation of covenants, conditions, or restrictions, or building setback lines shown on a plat of subdivision recorded or filed in the Public Records.

Wherever in this endorsement the words “covenants, conditions, or restrictions” appear, they shall not be deemed to refer to or include the terms, covenants, conditions, or limitations contained in an instrument creating a lease.

As used in paragraphs 1.b.i. and 5, the words “covenants, conditions, or restrictions” do not include any covenants, conditions, or restrictions (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 excepted in Schedule B.

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]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

**NM 50.1: RESTRICTIONS, ENCROACHMENTS, MINERALS – LOAN POLICY
ENDORSEMENT**

**This endorsement is issued as part of
Policy Number _____
Issued by
BLANK TITLE INSURANCE COMPANY**

The Company insures the owner of the Indebtedness secured by the Insured Mortgage against loss or damage sustained by reason of:

1. The existence at Date of Policy of any of the following:
 - a. Covenants, conditions, or restrictions under which the lien of the Insured Mortgage can be divested, subordinated, or extinguished or its validity, priority, or enforceability impaired.
 - b. Unless expressly excepted in Schedule B,
 - (i) Present violations on the Land of any enforceable covenants, conditions, or restrictions, or existing improvements on the Land which violate any building setback lines shown on a plat of subdivision recorded or filed in the Public Records.
 - (ii) Any instrument referred to in Schedule B as containing covenants, conditions, or restrictions on the Land that, in addition, (A) establishes an easement on the Land; (B) provides a lien for liquidated damages; (C) provides for a private charge or assessment; (D) provides for an option to purchase, a right of first refusal, or the prior approval of a future purchaser or occupant.
 - (iii) Any encroachment of existing improvements located on the Land onto adjoining land or any encroachment onto the Land of existing improvements located on adjoining land.
 - (iv) Any encroachment of existing improvements located on the Land onto that portion of the Land subject to any easement excepted in Schedule B.
 - (v) Any notices of violation of covenants, conditions, or restrictions relating to environmental protection recorded or filed in the Public Records.
2. Any future violation on the Land of any existing covenants, conditions, or restrictions occurring prior to the acquisition of Title by the Insured, provided the violation results in
 - a. invalidity, loss of priority, or unenforceability of the lien of the Insured Mortgage;or
 - b. loss of Title if the Insured shall acquire Title in satisfaction of the Indebtedness.
3. Damage to existing improvements, including lawns, shrubbery, or trees, located or encroaching on that portion of the Land subject to any easement excepted in Schedule B, which damage results from the exercise of the right to maintain the easement for the purpose for which it was granted or reserved.

4. Damage to improvements, including lawns, shrubbery, or trees, located on the Land on or after Date of Policy resulting from the future exercise of any right to use the surface of the Land for the extraction or development of minerals excepted from the description of the Land or excepted in Schedule B.
5. Any final court order or judgment requiring the removal from any land adjoining the Land of any encroachment excepted in Schedule B.
6. Any final court order or judgment denying the right to maintain any existing improvements on the Land because of any violation of covenants, conditions, or restrictions, or building setback lines shown on a plat of subdivision recorded or filed in the Public Records.

Wherever in this endorsement the words “covenants, conditions, or restrictions” appear, they do not include the terms, covenants, conditions, or limitations contained in an instrument creating a lease.

As used in paragraphs 1.b(i) and 6, the words “covenants, conditions, or restrictions” do not include any covenants, conditions, or restrictions (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 excepted in Schedule B.

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]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
 Authorized Signatory

NM FORM 51: LAND ABUTS STREET ENDORSEMENT

**This endorsement is issued as part of
Policy Number _____
Issued by
BLANK TITLE INSURANCE COMPANY**

The Company hereby insures the insured against loss or damage which the insured shall sustain by reason of the failure of the land to abut upon a physically open street known as (insert name of street).

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]

[DATE]

BLANK TITLE INSURANCE COMPANY

**By: _____
Authorized Signatory**

NM FORM 52: LOCATION ENDORSEMENT

**This endorsement is issued as part of
Policy Number_____**

**Issued by
BLANK TITLE INSURANCE COMPANY**

The Company insures against loss or damage sustained by the insured by reason of failure of a (description of improvement), known as (street address), to be located on land at date of 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, the endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

**By: _____
Authorized Signatory**

NM FORM 54: CONTIGUITY – SINGLE PARCEL ENDORSEMENT

This endorsement is issued as part of

Policy Number _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of:

1. the failure of the Land to be contiguous to **[describe the land that is contiguous to the Land by its legal description or by reference to a recorded instrument - e.g. “. . . that certain parcel of real property legally described in the deed recorded as Instrument No. , records of County, State of]** along the _____ boundary line[s]; or

2. the presence of any gaps, strips, or gores separating the contiguous boundary lines described above.

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]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

NM FORM 55: NAMED INSURED ENDORSEMENT

**This endorsement is issued as part of
Policy Number _____
Issued by
BLANK TITLE INSURANCE COMPANY**

Paragraph 1(a) of Conditions and Stipulations is deleted and the following paragraph is substituted in its place:

“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, partnership or fiduciary successors, and specifically, without limitation, the following:

(i) the successors in interest to a corporation, limited liability company, or limited liability partnership named as an insured in Schedule A resulting from merger, consolidation, conversion, or distribution of the assets of the corporation, limited liability company, or limited liability partnership upon partial or complete liquidation;

(ii) the successors in interest to a general or limited partnership, limited liability company or limited liability partnership named as an insured in Schedule A which dissolves but does not terminate.

(iii) the successors in interest to a general or limited partnership named as an insured in Schedule A resulting from distribution of the assets of the general or limited partnership upon partial or complete liquidation;

(iv) the successors in interest to a joint venture named as an insured in Schedule A resulting from distribution of the assets of the joint venture upon partial or complete liquidation;

(v) the trustee or successor trustee of a written trust instrument established by the insured named in Schedule A for estate planning purposes to whom title is transferred after the policy date;

(vi) the successor or substitute trustee of a trustee named in a written trust instrument established by the insured named in Schedule A for estate planning purposes; or

(vii) the successor in interest to a trustee or trust resulting from distribution to the beneficiaries of the trust of all or part of the assets of the trust established by the insured named in Schedule A for estate planning purposes.

This endorsement is made a part of the policy and is subject to all 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 prior endorsement, if any, nor does it extend the effective date of the policy and prior endorsements or increase the face amount thereof.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

**By: _____
Authorized Signatory**

**NM FORM 56: RESTRICTIONS, ENCROACHMENTS, MINERALS – OWNER’S POLICY
(UNIMPROVED LAND) ENDORSEMENT**

**This endorsement is issued as part of
Policy Number _____
issued by
BLANK TITLE INSURANCE COMPANY**

The Company insures against loss or damage sustained by the Insured by reason of:

1. The existence, at Date of Policy, of any of the following unless expressly excepted in Schedule B:
 - a. Present violations on the Land of any enforceable covenants, conditions, or restrictions.
 - b. Any instrument referred to in Schedule B as containing covenants, conditions, or restrictions on the Land that, in addition, (i) establishes an easement on the Land; (ii) provides for an option to purchase, a right of first refusal, or the prior approval of a future purchaser or occupant; or (iii) provides a right of reentry, possibility of reverter, or right of forfeiture because of violations on the Land of any enforceable covenants, conditions, or restrictions.
 - c. Any encroachment onto the Land of existing improvements located on adjoining land.
 - d. Any notices of violation of covenants, conditions, or restrictions relating to environmental protection recorded or filed in the Public Records.
2. Damage to buildings constructed on the Land after Date of Policy resulting from the future exercise of any right existing at Date of Policy to use the surface of the Land for the extraction or development of minerals excepted from the description of the Land or excepted in Schedule B.

Wherever in this endorsement the words “covenants, conditions, or restrictions” appear, they shall not be deemed to refer to or include the terms, covenants, conditions, or limitations contained in an instrument creating a lease.

As used in paragraph 1.a., the words “covenants, conditions, or restrictions” do not include any covenants, conditions, or restrictions (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 excepted in Schedule B.

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]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

Modeled on, but not necessarily identical to, ALTA Form 9.1-06, adopted 06-17-2006.

**NM FORM 56.1: RESTRICTIONS, ENCROACHMENTS, MINERALS ENDORSEMENT
(OWNER'S POLICY – UNIMPROVED LAND)**

**This endorsement is issued as part of
Policy Number _____
issued by
BLANK TITLE INSURANCE COMPANY**

The Company insures against loss or damage sustained by the Insured by reason of:

1. The existence, at Date of Policy, of any of the following unless expressly excepted in Schedule B:

- a. Present violations on the Land of any enforceable covenants, conditions, or restrictions,
- b. Any instrument referred to in Schedule B as containing covenants, conditions, or restrictions on the Land that, in addition, (i) establishes an easement on the Land; (ii) provides for an option to purchase, a right of first refusal, or the prior approval of a future purchaser or occupant; or (iii) provides a right of reentry, possibility of reverter, or right of forfeiture because of violations on the Land of any enforceable covenants, conditions, or restrictions.
- c. Any encroachment onto the Land of existing improvements located on adjoining land.
- d. Any notices of violation of covenants, conditions, or restrictions relating to environmental protection recorded or filed in the Public Records.

2. Damage to improvements (excluding lawn, shrubbery, or trees) constructed on the Land after Date of Policy resulting from the future exercise of any right existing at Date of Policy to use the surface of the Land for the extraction or development of minerals excepted from the description of the Land or excepted in Schedule B.

Wherever in this endorsement the words "covenants, conditions, or restrictions" appear, they do not include the terms, covenants, conditions, or limitations contained in an instrument creating a lease.

As used in paragraphs 1.a., the words "covenants, conditions, or restrictions" do not include any covenants, conditions, or restrictions (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 excepted in Schedule B.

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]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

**NM FORM 57: RESTRICTIONS, ENCROACHMENTS, MINERALS – OWNER’S POLICY
(IMPROVED LAND) ENDORSEMENT**

**This endorsement is issued as part of
Policy Number _____
Issued by
BLANK TITLE INSURANCE COMPANY**

The Company insures against loss or damage sustained by the Insured by reason of:

1. The existence, at Date of Policy, of any of the following unless expressly excepted in Schedule B:
 - a. Present violations on the Land of any enforceable covenants, conditions, or restrictions, or any existing improvements on the Land which violate any building setback lines shown on a plat of subdivision recorded or filed in the Public Records.
 - b. Any instrument referred to in Schedule B as containing covenants, conditions, or restrictions on the Land that, in addition, (i) establishes an easement on the Land; (ii) provides for an option to purchase, a right of first refusal, or the prior approval of a future purchaser or occupant; or (iii) provides a right of reentry, possibility of reverter, or right of forfeiture because of violations on the Land of any enforceable covenants, conditions, or restrictions.
 - c. Any encroachment of existing improvements located on the Land onto adjoining land, or any encroachment onto the Land of existing improvements located on adjoining land.
 - d. Any encroachment of existing improvements located on the Land onto that portion of the Land subject to any easement excepted in Schedule B.
 - e. Any notices of violation of covenants, conditions, or restrictions relating to environmental protection recorded or filed in the Public Records.
2. Damage to existing buildings
 - a. That are located on or encroach upon that portion of the Land subject to any easement excepted in Schedule B, which damage results from the exercise of the right to maintain the easement for the purpose for which it was granted or reserved;
 - b. Resulting from the future exercise of any right existing at Date of Policy to use the surface of the Land for the extraction or development of minerals excepted from the description of the Land or excepted in Schedule B.
3. Any final court order or judgment requiring the removal from any land adjoining the Land of any encroachment, other than fences, landscaping, or driveways, excepted in Schedule B.
4. Any final court order or judgment denying the right to maintain any existing building on the Land because of any violation of covenants, conditions, or restrictions, or building setback lines shown on a plat of subdivision recorded or filed in the Public Records.

Wherever in this endorsement the words “covenants, conditions, or restrictions” appear, they shall not be deemed to refer to or include the terms, covenants, conditions, or limitations contained in an instrument creating a lease.

As used in paragraphs 1.a. and 4, the words “covenants, conditions, or restrictions” do not include any covenants, conditions, or restrictions (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 excepted in Schedule B.

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]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
 Authorized Signatory

**NM FORM 57.1: RESTRICTIONS, ENCROACHMENTS, MINERALS (OWNER'S POLICY –
IMPROVED LAND) ENDORSEMENT**

**This endorsement is issued as part of
Policy Number _____**

**Issued by
BLANK TITLE INSURANCE COMPANY**

The Company insures against loss or damage sustained by the Insured by reason of:

1. The existence, at Date of Policy, of any of the following unless expressly excepted in Schedule B:
 - a. Present violations on the Land of any enforceable covenants, conditions, or restrictions, or any existing improvements on the Land that violate any building setback lines shown on a plat of subdivision recorded or filed in the Public Records.
 - b. Any instrument referred to in Schedule B as containing covenants, conditions, or restrictions on the Land that, in addition, (i) establishes an easement on the Land; (ii) provides for an option to purchase, a right of first refusal, or the prior approval of a future purchaser or occupant; or (iii) provides a right of reentry, possibility of reverter, or right of forfeiture because of violations on the Land of any enforceable covenants, conditions, or restrictions.
 - c. Any encroachment of existing improvements located on the Land onto adjoining land or any encroachment onto the Land of existing improvements located on adjoining land.
 - d. Any encroachment of existing improvements located on the Land onto that portion of the Land subject to any easement excepted in Schedule B.
 - e. Any notices of violation of covenants, conditions, or restrictions relating to environmental protection recorded or filed in the Public Records.
2. Damage to existing buildings that are located on or encroach upon that portion of the Land subject to any easement excepted in Schedule B, which damage results from the exercise of the right to maintain the easement for the purpose for which it was granted or reserved.
3. Damage to improvements (excluding lawns, shrubbery, or trees) located on the Land on or after Date of Policy resulting from the future exercise of any right existing at Date of Policy to use the surface of the Land for the extraction or development of minerals excepted from the description of the Land or excepted in Schedule B.
4. Any final court order or judgment requiring the removal from any land adjoining the Land of any encroachment, other than fences, landscaping, or driveways, excepted in Schedule B.
5. Any final court order or judgment denying the right to maintain any existing building on the Land because of any violation of covenants, conditions, or restrictions or building setback lines shown on a plat of subdivision recorded or filed in the Public Records.

Wherever in this endorsement the words "covenants, conditions, or restrictions" appear, they do not include the terms, covenants, conditions, or limitations contained in an instrument creating a lease.

As used in paragraphs 1.a. and 5, the words “covenants, conditions, or restrictions” do not include any covenants, conditions, or restrictions (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 excepted in Schedule B.

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]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
 Authorized Signatory

NM FORM 58: FIRST LOSS — MULTIPLE PARCEL TRANSACTION ENDORSEMENT

This endorsement is issued as part of
Policy Number _____
Issued by
BLANK TITLE INSURANCE COMPANY

This endorsement is effective only if the Collateral includes at least two parcels of real property.

1. For the purposes of this endorsement:
 - a. "Collateral" means all property, including the Land, given as security for the Indebtedness.
 - b. "Material Impairment Amount" means the amount by which any matter covered by the policy for which a claim is made diminishes the value of the Collateral below the Indebtedness.
2. In the event of a claim resulting from a matter insured against by the policy, the Company agrees to pay that portion of the Material Impairment Amount that does not exceed the extent of liability imposed by Section 8 of the Conditions without requiring:
 - a. maturity of the Indebtedness by acceleration or otherwise,
 - b. pursuit by the Insured of its remedies against the Collateral, or
 - c. pursuit by the Insured of its remedies under any guaranty, bond or other insurance policy.
3. Nothing in this endorsement shall impair the Company's right of subrogation. However, the Company agrees that its right of subrogation shall be subordinate to the rights and remedies of the Insured. The Company's right of subrogation shall include the right to recover the amount paid to the Insured pursuant to Section 2 of this endorsement from any debtor or guarantor of the Indebtedness, after payment or other satisfaction of the remainder of the Indebtedness and other obligations secured by the lien of the Insured Mortgage. The Company shall have the right to recoup from the Insured Claimant any amount received by it in excess of the Indebtedness up to the amount of the payment under Section 2.

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]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

NM FORM 60: AGGREGATION—LOAN POLICY ENDORSEMENT

This endorsement is issued as part of

Policy Number _____

issued by

BLANK TITLE INSURANCE COMPANY

1. The following policies are issued in conjunction with one another:

<u>POLICY NUMBER:</u>	<u>STATE:</u>	<u>AMOUNT OF INSURANCE:</u>
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____

2. The amount of insurance available to cover the Company's liability for loss or damage under this policy at the time of payment of loss shall be the Aggregate Amount of Insurance defined in Section 3 of this endorsement.

3. Subject to the limits in Section 4 of this endorsement, the Aggregate Amount of Insurance under this policy is \$ _____.

4. Condition 7.a. is restated in its entirety to read:

7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company has the following additional options:

- a. *To Pay or Tender Payment of up to the Aggregate Amount of Insurance or to Purchase the Indebtedness*
- i. To pay or tender payment of the lesser of the value of the Title as insured at the date the claim was made by the Insured Claimant, or the Aggregate Amount of Insurance applicable 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 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. 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 purchase and that the Company is obligated to pay.

If the Company purchases the Indebtedness, the Insured must 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 option provided for in Condition 7.a., the Company's liability and obligations to the Insured under this policy terminate, including any obligation to defend, prosecute, or continue any litigation.

5. Condition 8 is restated in its entirety to read:

8. CONTRACT OF INDEMNITY; DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by an Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy. This policy is not an abstract of the Title, report of the condition of the Title, legal opinion, opinion of the Title, or other representation of the status of the Title. All claims asserted under this policy are based in contract and are restricted to the terms and provisions of this policy.

a. The extent of liability of the Company for loss or damage under this policy does not exceed the least of:

- i. the Aggregate Amount of Insurance;
- ii. the Indebtedness;
- iii. the difference between the fair market value of the Title, as insured, and the fair market value of the Title subject to the matter insured against by this policy; or
- iv. if a Government Mortgage Agency or Instrumentality is the Insured Claimant, the amount it paid in the acquisition of the Title or the Insured Mortgage or in satisfaction of its insurance contract or guaranty relating to the Title or the Insured Mortgage.

b. Fair market value of the Title in Condition 8.a.iii. is calculated using either:

- i. the date the Insured acquires the Title as a result of a foreclosure or deed in lieu of foreclosure of the Insured Mortgage; or
- ii. the date the lien of the Insured Mortgage or any assignment set forth in Item 4 of Schedule A is extinguished or rendered unenforceable by reason of a matter insured against by this policy.

c. If the Company pursues its rights under Condition 5.b. and is unsuccessful in establishing the Title or the lien of the Insured Mortgage, as insured, the Insured Claimant may, by written notice given to the Company, elect, as an alternative to the dates set forth in Condition 8.b., to use either the date the settlement, action, proceeding, or other act described in Condition 5.b. is concluded or the date the notice of claim required by Condition 3 is received by the Company as the date for calculating the fair market value of the Title in Condition 8.a.iii.

d. In addition to the extent of liability for loss or damage under Conditions 8.a. and 8.c., the Company will also pay the costs, attorneys' fees, and expenses incurred in accordance with Conditions 5 and 7.

6. Condition 10 is restated in its entirety to read:

10. REDUCTION OR TERMINATION OF INSURANCE

a. All payments under this policy, except payments made for costs, attorneys' fees, and expenses, reduce the Aggregate Amount of Insurance by the amount of the payment. However, any payment made by the Company prior to the acquisition of the Title as provided in Condition 2 does not reduce the Aggregate Amount of Insurance afforded under this endorsement, except to the extent that the payment reduces the Indebtedness.

b. When the Title is acquired by the Insured as a result of foreclosure or deed in lieu of foreclosure, the amount credited against the Indebtedness does not reduce the Aggregate Amount of Insurance.

c. The voluntary satisfaction or release of the Insured Mortgage terminates all liability of the Company under this policy, except as provided in Condition 2, but it will not reduce the Aggregate Amount of Insurance for the other policies identified in Section 1 of this 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]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

NM FORM 60.1: AGGREGATION — STATE LIMITS — LOAN POLICY ENDORSEMENT

This endorsement is issued as part of
Policy Number _____
issued by
BLANK TITLE INSURANCE COMPANY

1. The following policies are issued in conjunction with one another:

<u>POLICY NUMBER:</u>	<u>STATE:</u>	<u>AMOUNT OF INSURANCE:</u>
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____

2. The amount of insurance available to cover the Company's liability for loss or damage under this policy at the time of payment of loss shall be the Aggregate Amount of Insurance defined in Section 3 of this endorsement.

3. Subject to the limits in Section 4 of this endorsement, the Aggregate Amount of Insurance under this policy is either:

a. \$ _____; or

- b. If the Land is located in one of the states identified in this subsection, then the Aggregate Amount of Insurance is restricted to the amount shown below:

<u>STATE:</u>	<u>AGGREGATE AMOUNT OF INSURANCE:</u>
_____	\$ _____
_____	\$ _____

4. Condition 7.a. is restated in its entirety to read:

7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company has the following additional options:

a. *To Pay or Tender Payment of up to the Aggregate Amount of Insurance or to Purchase the Indebtedness*

i. To pay or tender payment of the lesser of the value of the Title as insured at the date the claim was made by the Insured Claimant, or the Aggregate Amount of Insurance applicable 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 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. 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 purchase and that the Company is obligated to pay.

If the Company purchases the Indebtedness, the Insured must 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 option provided for in Condition 7.a., the Company's liability and obligations to the Insured under this policy terminate, including any obligation to defend, prosecute, or continue any litigation.

5. Condition 8 is restated in its entirety to read:

8. CONTRACT OF INDEMNITY; DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by an Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy. This policy is not an abstract of the Title, report of the condition of the Title, legal opinion, opinion of the Title, or other representation of the status of the Title. All claims asserted under this policy are based in contract and are restricted to the terms and provisions of this policy.

a. The extent of liability of the Company for loss or damage under this policy does not exceed the least of:

- i. the Aggregate Amount of Insurance for the State where the Land is located;
- ii. the Indebtedness;
- iii. the difference between the fair market value of the Title, as insured, and the fair market value of the Title subject to the matter insured against by this policy; or
- iv. if a Government Mortgage Agency or Instrumentality is the Insured Claimant, the amount it paid in the acquisition of the Title or the Insured Mortgage or in satisfaction of its insurance contract or guaranty relating to the Title or the Insured Mortgage.

b. Fair market value of the Title in Condition 8.a.iii. is calculated using either:

i. the date the Insured acquires the Title as a result of a foreclosure or deed in lieu of foreclosure of the Insured Mortgage; or

ii. the date the lien of the Insured Mortgage or any assignment set forth in Item 4 of Schedule A is extinguished or rendered unenforceable by reason of a matter insured against by this policy.

c. If the Company pursues its rights under Condition 5.b. and is unsuccessful in establishing the Title or the lien of the Insured Mortgage, as insured, the Insured Claimant may, by written notice given to the Company, elect, as an alternative to the dates set forth in Condition 8.b., to use either the date the settlement, action, proceeding, or other act described in Condition 5.b. is concluded or the date the notice of claim required by Condition 3 is received by the Company as the date for calculating the fair market value of the Title in Condition 8.a.iii.

d. In addition to the extent of liability for loss or damage under Conditions 8.a. and 8.c., the Company will also pay the costs, attorneys' fees, and expenses incurred in accordance with Conditions 5 and 7.

6. Condition 10 is restated in its entirety to read:

10. REDUCTION OR TERMINATION OF INSURANCE

a. All payments under this policy, except payments made for costs, attorneys' fees, and expenses, reduce the applicable Aggregate Amount of Insurance by the amount of the payment. However, any payment made by the Company prior to the acquisition of the Title as provided in Condition 2 does not reduce the Aggregate Amount of Insurance afforded under this endorsement, except to the extent that the payment reduces the Indebtedness.

b. If this policy insures the Title to Land located in a state identified in Section 3.b. of this endorsement:

i. all payments under this policy, except payments made for costs, attorneys' fees, and expenses, reduce the Aggregate Amount of Insurance by the amount of the payment; but

ii. a payment made for loss or damage on Land insured in one of the policies identified in Section 1 on Land located outside this state does not reduce the Aggregate Amount of Insurance in Section 3.b. of this endorsement until the Aggregate Amount of Insurance in Section 3.a. is reduced below the Aggregate Amount of Insurance in Section 3.b.

c. When the Title is acquired by the Insured as a result of foreclosure or deed in lieu of foreclosure, the amount credited against the Indebtedness does not reduce the Aggregate Amount of Insurance.

d. The voluntary satisfaction or release of the Insured Mortgage terminates all liability of the Company under this policy, except as provided in Condition 2, but it will not reduce the Aggregate Amount of Insurance for the other policies identified in Section 1 of this 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]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
 [Authorized Signatory]

NM FORM 61: FOUNDATION ENDORSEMENT

This endorsement is issued as part of

Policy Number_____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company hereby insures the owner of the indebtedness secured by the insured mortgage against loss or damage which the insured shall sustain by reason of:

(1) The failure of the foundation of the structure under construction on the land to be within the boundary lines of the land as of the date hereof;

(2) The location of the foundation as of the date hereof being in violation of the covenants, conditions or restrictions referred to in Schedule B as of the date herein, except (describe the violation or state "none").

(3) The foundation encroaching as of the date hereof onto any of the easements referred to in Schedule B, except

(describe the encroachment or state "none").

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]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

NM FORM 62: ASSIGNMENT OF RENTS / LEASES ENDORSEMENT

This endorsement is issued as part of

Policy Number_____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company hereby insures the insured against loss that the insured shall sustain by reason of:

1. Any defect in the execution of the document entitled _____ referred to in paragraph _____ of part _____ of Schedule _____; and
2. The existence, as shown by the public records, of any prior assignment of the lessor's interest in the lease or leases specified in such document, including any assignments of rents thereunder, other than as set forth in Schedule B.

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]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

NM FORM 64: ZONING ENDORSEMENT

This endorsement is issued as part of

Policy Number _____

issued by

BLANK TITLE INSURANCE COMPANY

1. For purposes of this endorsement, "Zoning Ordinance" means a zoning ordinance or zoning regulation of a political subdivision of the State that is in effect and applicable to the Land at the Date of Policy.
2. The Company insures against loss or damage sustained by the Insured in the event that, at the Date of Policy:
 - a. According to the Zoning Ordinance, the Land is not classified Zone _____;
 - b. The following use or uses are not allowed under that classification: _____.
3. There is no liability under this endorsement based on:
 - a. The lack of compliance with any condition, restriction, or requirement contained in the Zoning Ordinance, including but not limited to the failure to secure necessary consents or authorizations as a prerequisite to the use or uses. Section 3.a. does not modify or limit the coverage provided in Covered Risk 5.
 - b. The invalidity of the Zoning Ordinance until after a final decree of a State or federal court having jurisdiction adjudicating the invalidity, the effect of which is to prohibit the use or uses described in Section 2.b.
 - c. 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]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

**NM FORM 64.1: ZONING – UNIMPROVED LAND – NO APPLICABLE ZONING
ORDINANCES ENDORSEMENT**

This endorsement is issued as part of

Policy Number _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured in the event that, at Date of Policy, the Land is subject to any applicable zoning ordinance.

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]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

Modeled on, but not necessarily identical to, ALTA Form 3.1, 2021 v. 01.00 (adopted 07-01-2021)

NM FORM 65: ZONING — COMPLETED STRUCTURE ENDORSEMENT

**This endorsement is issued as part of
Policy Number _____
issued by
BLANK TITLE INSURANCE COMPANY**

1. For purposes of this endorsement, “Zoning Ordinance” means a zoning ordinance or zoning regulation of a political subdivision of the State that is in effect and applicable to the Land at the Date of Policy.
2. The Company insures against loss or damage sustained by the Insured in the event that, at the Date of Policy:
 - a. According to the Zoning Ordinance, the Land is not classified Zone _____;
 - b. The following use or uses are not allowed under that classification: _____;
 - c. There is no liability under Section 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 Ordinance, including but not limited to the failure to secure necessary consents or authorizations as a prerequisite to the use or uses. Section 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 State or federal court having jurisdiction either prohibiting the use of the Land, with any existing structure, as specified in Section 2.b. or requiring the removal or alteration of the structure because, at the Date of Policy, the Zoning Ordinance has been violated with respect to any of the following matters:
 - a. The area, width, or depth of the Land as a building site for the structure;
 - b. The floor space area of the structure;
 - c. A setback of the structure from the property lines of the Land;
 - d. The height of the structure; or
 - e. The number of parking spaces.
4. There is no liability under this endorsement based on:
 - a. The invalidity of the Zoning Ordinance until after a final decree of a State or federal court having jurisdiction adjudicating the invalidity, the effect of which is to prohibit the use or uses described in Section 2.b.
 - b. The refusal of any person to purchase, lease, or lend money on the Title covered by this policy.

Modeled on, but not necessarily identical to, ALTA Form 3.1, 2021 v. 01.00 (adopted 07-01-2021)

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]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

NM FORM 65.1: 3.2 ZONING — LAND UNDER DEVELOPMENT ENDORSEMENT

This endorsement is issued as part of

Policy Number _____

issued by

BLANK TITLE INSURANCE COMPANY

1. For purposes of this endorsement:

a. "Improvement": A building, structure, road, walkway, driveway, curb, subsurface utility, or water well existing at the 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.

b. "Plans": Those site and elevation plans made by *[name of architect or engineer]* dated _____, last revised _____, designated as *[name of project]* consisting of _____ sheets.

c. "Zoning Ordinance": A zoning ordinance or zoning regulation of a political subdivision of the State that is in effect and applicable to the Land at the Date of Policy.

2. The Company insures against loss or damage sustained by the Insured in the event that, at the Date of Policy:

a. According to the Zoning Ordinance, the Land is not classified Zone _____;

b. The following use or uses are not allowed under that classification: _____;

c. There is no liability under Section 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 Ordinance, including but not limited to the failure to secure necessary consents or authorizations as a prerequisite to the use or uses. Section 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 State or federal court having jurisdiction either prohibiting the use of the Land, with any Improvement, as specified in Section 2.b. or requiring the removal or alteration of the Improvement because, at the Date of Policy, the Zoning Ordinance has been violated with respect to any of the following matters:

- a. The area, width, or depth of the Land as a building site for the Improvement;
- b. The floor space area of the Improvement;
- c. A setback of the Improvement from the property lines of the Land;
- d. The height of the Improvement; or
- e. The number of parking spaces.

4. There is no liability under this endorsement based on:

- a. The invalidity of the Zoning Ordinance until after a final decree of a State or federal court having jurisdiction adjudicating the invalidity, the effect of which is to prohibit the use or uses described in Section 2.b.
- 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]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
 [Authorized Signatory]

**NM FORM 65.2: ZONING – COMPLETED STRUCTURE – NO APPLICABLE ZONING
ORDINANCES ENDORSEMENT**

This endorsement is issued as part of

Policy Number _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured in the event that, at Date of Policy, the Land is subject to any applicable zoning ordinance.

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]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

NM FORM 66: CONTIGUITY – MULTIPLE PARCELS ENDORSEMENT

This endorsement is issued as part of

Policy Number _____

issued by

BLANK TITLE INSURANCE COMPANY

The company insures against loss or damage sustained by Insured by reason of;

1. The failure [of the _____ boundary line of Parcel A] of land to be contiguous to [the _____ boundary line of Parcel B] **[For more than two parcels, continue as follows:”; of [the _____ boundary line of Parcel B] of the Land to be contiguous to [the _____ boundary line of Parcel C] and so on until all contiguous parcels described in the policy have been accounted for.]; or**

2. The presence of any gaps, strips, or gores separating any of the contiguous boundary lines described above.

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]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

NM FORM 67: ACCESS AND ENTRY ENDORSEMENT

This endorsement is issued as part of

Policy Number _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company hereby insures against loss or damage sustained by the insured if, at date of policy: (i) the land does not abut and have both actual vehicular and pedestrian access to and from [insert name of street, road, or highway] (the "street"), (ii) the street is not physically open and publicly maintained, or (iii) the insured has no right to use existing curb cuts or entries along that portion of the street abutting the land.

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]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

NM FORM 68: INDIRECT ACCESS AND ENTRY ENDORSEMENT

This endorsement is issued as part of

Policy Number _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured if, at Date of Policy, (i) the easement identified in Schedule A (the "Easement") does not provide that portion of the Land identified in Schedule A both actual vehicular and pedestrian access to and from (the "Street"), (ii) the Street is not physically open and publicly maintained, or (iii) the Insured has no right to use existing curb cuts or entries along that portion of the Street abutting the Easement.

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]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

NM FORM 69: UTILITY ACCESS ENDORSEMENT

This endorsement is issued as part of
Policy Number _____
Issued by
BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of the lack of a right of access to the following utilities or services:

_____ Water service _____ Natural gas service _____ Telephone service
_____ Electrical power service _____ Sanitary sewer _____ Storm water drainage

either over, under or upon rights-of-way or easements for the benefit of the Land because of:

- (1) a gap or gore between the boundaries of the Land and the rights-of-way or easements;
- (2) a gap between the boundaries of the rights-of-way or easements ; or
- (3) a termination by a grantor, or its successor, of the rights-of-way or easements.

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]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

NM FORM 70: COMMERCIAL ENVIRONMENTAL PROTECTION LIEN ENDORSEMENT

**This endorsement is issued as part of
Policy Number _____
Issued by
BLANK TITLE INSURANCE COMPANY**

The Company insures against loss or damage sustained by the Insured by reason of an environmental protection lien that, at Date of Policy, is recorded in the Public Records or filed in the records of the clerk of the United States district court for the district in which the Land is located, unless the environmental protection lien is set forth as an exception in Schedule B.

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]

[DATE]

BLANK TITLE INSURANCE COMPANY

**By: _____
Authorized Signatory**

NM FORM 71: FUTURE ADVANCE — REVERSE MORTGAGE ENDORSEMENT

**This endorsement is issued as part of
Policy Number _____
issued by
BLANK TITLE INSURANCE COMPANY**

1. The insurance for Advances added by Sections 3 and 4 of this endorsement is subject to the exclusions in Section 5 of this endorsement and the Exclusions from Coverage in the policy (except Exclusion 3.d.), the Conditions, and the exceptions from coverage contained in Schedule B.
2. The following terms when used in this endorsement mean:
 - a. “Advance”: Only an advance of principal made after the Date of Policy as provided in the Agreement, including expenses of foreclosure; amounts advanced pursuant to the Insured Mortgage to pay taxes and insurance, assure compliance with laws, or to protect the lien of the Insured Mortgage before the time of acquisition of the Title; and reasonable amounts expended to prevent deterioration of improvements, together with interest on those advances.
 - b. “Agreement”: The note or loan agreement, the repayment of Advances under which is secured by the Insured Mortgage.
 - c. “Changes in the Rate of Interest”: Only those changes in the rate of interest calculated pursuant to a formula provided in the Insured Mortgage or the Agreement at the Date of Policy.
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 Advance.
 - b. The lack of priority of the lien of the Insured Mortgage as security for each Advance over any lien or encumbrance on the Title.
 - c. The invalidity, unenforceability, or lack of priority of the lien of the Insured Mortgage as security for the Indebtedness, Advances, and unpaid interest resulting from:
 - i. re-Advances and repayments of Indebtedness;
 - ii. earlier periods of no indebtedness owing during the term of the Insured Mortgage;
 - iii. the Insured Mortgage not complying with the requirements of State law of the State in which the Land is located to secure Advances;
 - iv. failure of the Insured Mortgage to state the term for Advances; or
 - v. failure of the Insured Mortgage to state the maximum amount secured by the Insured Mortgage.
 - d. The invalidity or unenforceability of the lien of the Insured Mortgage because of the failure of the mortgagor to be at least 62 years of age at the Date of Policy.

4. The Company further insures against loss or damage sustained by the Insured by reason of:

- a. The invalidity or unenforceability of the lien of the Insured Mortgage resulting from any provisions of the Agreement that provide for:
 - i. interest on interest;
 - ii. Changes in the Rate of Interest; or
 - iii. the addition of unpaid interest to the principal of the Indebtedness.
- b. The lack of priority of the lien of the Insured Mortgage as security for the Indebtedness, including any unpaid interest that was added to principal in accordance with any provisions of the Agreement, interest on interest, or interest as changed in accordance with the provisions of the Insured Mortgage, which lack of priority is caused by:
 - i. Changes in the Rate of Interest;
 - ii. interest on interest; or
 - iii. increases in the principal of the Indebtedness resulting from the addition of unpaid interest.

As used in Section 4, “interest” includes lawful interest based on appreciated value.

5. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys’ fees, or expenses) resulting from:

- a. The invalidity, unenforceability, or lack of priority of the lien of the Insured Mortgage as security for any Advance made after a Petition for Relief under the Bankruptcy Code (11 U.S.C.) has been filed by or on behalf of the mortgagor;
- b. The lien of real estate taxes or assessments on the Title imposed by governmental authority arising after the Date of Policy;
- c. The lack of priority of the lien of the Insured Mortgage as security for any Advance to a federal tax lien, which Advance is made after the earlier of:
 - i. Knowledge of the Insured that a federal tax lien was filed against the mortgagor; or
 - ii. the expiration, after notice of a federal tax lien filed against the mortgagor, of any grace period for making disbursements with priority over the federal tax lien provided in the Internal Revenue Code (26 U.S.C.);
- d. Any federal or state environmental protection lien[; or]
- e. Any usury law or Consumer Protection Law[; or]
- f. Any mechanic’s or materialman’s lien].

6. The Indebtedness includes Advances.

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]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

NM FORM 72: SINGLE TAX PARCEL ENDORSEMENT

This endorsement is issued as part of

Policy Number _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of the Land being taxed as part of a larger parcel of land or failing to constitute a separate tax parcel for real estate taxes.

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]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

NM FORM 73: MULTIPLE TAX PARCEL — EASEMENTS ENDORSEMENT

This endorsement is issued as part of

Policy Number _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of:

1. those portions of the Land identified below not being assessed for real estate taxes under the listed tax identification numbers or those tax identification numbers including any additional land:

Parcel:

Tax Identification Numbers:

2. the easements, if any, described in Schedule A being cut off or disturbed by the nonpayment of real estate taxes, assessments or other charges imposed on the servient estate by a governmental authority.

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]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

NM FORM 74: DOING BUSINESS ENDORSEMENT**This endorsement is issued as part of****Policy Number _____****Issued by****BLANK TITLE INSURANCE COMPANY**

The Company insures against loss or damage sustained by the Insured by reason of the invalidity or unenforceability of the lien of the Insured Mortgage on the ground that making the loan secured by the Insured Mortgage constituted a violation of the “doing - business” laws of the State where the Land is located because of the failure of the Insured to qualify to do business under those laws.

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]

[DATE]

BLANK TITLE INSURANCE COMPANY**By: _____****Authorized Signatory**

NM FORM 75: SUBDIVISION ENDORSEMENT

This endorsement is issued as part of

Policy Number _____

issued by

BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of the failure of the Land to constitute a lawfully created parcel according to the State subdivision statutes and the subdivision ordinances of the county or municipality of the State applicable to the Land.

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]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____

[Authorized Signatory]

NM FORM 76: EASEMENT – DAMAGE OR ENFORCED REMOVAL ENDORSEMENT

This endorsement is issued as part of

Policy Number _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of:

(1) damage to an existing building located on the Land, or

(2) enforced removal or alteration of an existing building located on the Land,

as a result of the exercise of the right of use or maintenance of the easement referred to in
Exception _____ of Schedule B for the purpose for which it was granted or reserved.

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]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

NM FORM 77: CO-INSURANCE – SINGLE POLICY ENDORSEMENT

This endorsement is issued as part of

Policy Number _____

Issued by

BLANK TITLE INSURANCE COMPANY

Attached to and made a part of Company ("Issuing Co-Insurer") Policy No. ("Co-Insurance Policy"). Issuing Co-Insurer and any other coinsurers are collectively referred to as "Co-Insurers."

1. Co-Insurer issues this endorsement as evidence of Co-Insurer's liability under Co-Insurance Policy and directs that this endorsement be attached to the Co-Insurance Policy adopting its Covered Risks, Exclusions, Conditions, Schedules and Endorsements, as follows:

Co-insuring Companies	Name and Address	Policy Number [File Number]	Amount of Insurance	Percentage of Liability
----------------------------------	-------------------------	--	--------------------------------	------------------------------------

Issuing Co-Insurer

Co-Insurer

Co-Insurer

Co-Insurer

Aggregate Amount of Insurance

2. Each Co-Insurer shall be liable to the Insured under the Co-insurance Policy only for the total of the loss and costs multiplied by its Proportion of Liability.

3. Any notice of claim and any other notice or statement in writing required to be given under the Co-Insurance Policy must be given to Co-Insurer at its address set forth above.

4. Any endorsement to the Co-Insurance Policy issued after the date of this Co-Insurance Endorsement must be signed on behalf of the Co-Insurer by its authorized officer or agent.

5. This Co-Insurance Endorsement is effective as of the Date of Policy of the Co-Insurance Policy. This Co-Insurance Endorsement may be executed in counterparts.

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]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

NM FORM 78: SAME AS SURVEY ENDORSEMENT**This endorsement is issued as part of****Policy Number _____****Issued by****BLANK TITLE INSURANCE COMPANY**

The Company insures against loss or damage sustained by the Insured by reason of the failure of the Land as described in Schedule A to be the same as that identified as that identified on the survey made by:

_____ dated _____, and
designated Job No. _____.

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]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

NM FORM 79: SAME AS PORTION OF SURVEY ENDORSEMENT

This endorsement is issued as part of

Policy Number _____

Issued by

BLANK TITLE INSURANCE COMPANY

The Company insures against loss or damage sustained by the Insured by reason of the failure of the Land as described in Schedule A to be the same as that identified as [Example: Parcel A, 8, C or Parcel 1, 2,3] on the survey made by:

_____, dated _____, and
designated Job No. _____.

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]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

NM FORM 80: MORTGAGE MODIFICATION ENDORSEMENT

**This endorsement is issued as part of
Policy Number _____
issued by
BLANK TITLE INSURANCE COMPANY**

1. 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 upon the Title at the Date of Endorsement as a result of the agreement dated _____, recorded _____ (“Modification”); and
 - b. The lack of priority of the lien of the Insured Mortgage, at the Date of Endorsement, over defects in or liens or encumbrances on the Title, except for those shown in the policy or any prior endorsement and except: *[Drafting Instruction: Specify exceptions, if any]*
2. This endorsement does not insure against loss or damage, and the Company will not pay costs, attorneys’ fees, or expenses, by reason of any claim that arises out of the transaction creating the Modification by reason of the operation of federal bankruptcy, state insolvency, or similar creditors’ rights law that is based on the Modification being a:
- a. fraudulent conveyance or fraudulent transfer;
 - b. voidable transfer under the Uniform Voidable Transactions Act; or
 - c. preferential transfer to the extent the Modification is not a transfer made as a contemporaneous exchange for new value or for any other reason unless the preferential transfer results solely from the failure:
 - i. to timely record the Modification in the Public Records after execution and delivery of the Modification to the Insured; or
 - ii. of the recording of the Modification in the Public Records to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.

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]

[DATE]

BLANK TITLE INSURANCE COMPANY

**By: _____
[Authorized Signatory]**

NM FORM 80.1: MORTGAGE MODIFICATION WITH SUBORDINATION ENDORSEMENT

This endorsement is issued as part of
Policy Number _____
issued by
BLANK TITLE INSURANCE COMPANY

1. 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 upon the Title at the Date of Endorsement as a result of the agreement dated _____, recorded _____ ("Modification"); and
 - b. The lack of priority of the lien of the Insured Mortgage, at the Date of Endorsement, over defects in or liens or encumbrances on the Title, except for those shown in the policy or any prior endorsement and except: *[Drafting Instruction: Specify exceptions, if any]*
 - c. The following matters not being subordinate to the lien of the Insured Mortgage: *[Drafting Instruction: Specify subordinate matters, if any]*
2. This endorsement does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses, by reason of any claim that arises out of the transaction creating the Modification by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights law that is based on the Modification being a:
 - a. fraudulent conveyance or fraudulent transfer;
 - b. voidable transfer under the Uniform Voidable Transactions Act; or
 - c. preferential transfer to the extent the Modification is not a transfer made as a contemporaneous exchange for new value or for any other reason, unless the preferential transfer results solely from the failure:
 - i. to timely record the Modification in the Public Records after execution and delivery of the Modification to the Insured; or
 - ii. of the recording of the Modification in the Public Records to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.

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]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

**NM FORM 80.2: MORTGAGE MODIFICATION WITH ADDITIONAL AMOUNT OF
INSURANCE ENDORSEMENT**

**This endorsement is issued as part of
Policy Number _____
issued by
BLANK TITLE INSURANCE COMPANY**

1. For purposes of this endorsement only:
 - a. "Modification": The agreement between _____ and _____ dated _____
[and recorded _____ as document number _____].
 - b. "Date of Endorsement": _____.
2. The Amount of Insurance is increased to \$_____.
3. Subject to the exclusions in Section[s] 4[and 5] of this endorsement, the Exclusions from Coverage, the Exceptions contained in Schedule B, and the Conditions contained in the policy, and any exclusion or exception in any prior endorsement, the Company insures as of the Date of Endorsement against loss or damage sustained by the Insured by reason of any of the following:
 - a. The invalidity or unenforceability of the lien of the Insured Mortgage upon the Title as a result of the Modification;
 - b. The lack of priority of the lien of the Insured Mortgage over defects in or liens or encumbrances on the Title, except: *[Drafting Instruction: Specify additional exceptions, if any];*
 - c. The failure of the following matters to be subordinate to the lien of the Insured Mortgage: *[Drafting Instruction: Specify matters to be insured as subordinate, if any].*
4. This endorsement does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses, by reason of any claim that arises out of the transaction creating the Modification by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights law that is based on the Modification being a:
 - a. fraudulent conveyance or fraudulent transfer;
 - b. voidable transfer under the Uniform Voidable Transactions Act; or
 - c. preferential transfer to the extent the Modification is not a transfer made as a contemporaneous exchange for new value or for any other reason unless the preferential transfer results solely from the failure:
 - i. to timely record the Modification in the Public Records after execution and delivery of the Modification to the Insured; or
 - ii. of the recording of the Modification in the Public Records to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.

[5.] This endorsement does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses, by reason of the invalidity, unenforceability, or lack of priority of the lien of the Insured Mortgage because all applicable mortgage recording or similar intangible taxes were not paid at time of recording of the Modification].

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]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

**NM FORM 81: CLOSING PROTECTION LETTER
SINGLE TRANSACTION
issued by
BLANK TITLE INSURANCE COMPANY**

“Addressee”:

“Date”:

“Issuing Agent” or “Approved Attorney”:

[Issuing Office:

Issuing Office’s ALTA® Registry ID:]

“Real Estate Transaction”:

[Seller:

Buyer:

Property Address:

Loan Number:]

Re: Closing Protection Letter

Dear

In consideration of Your acceptance of this letter, [*Blank Title Insurance Company*] (the “Company”), agrees to indemnify You for actual loss of 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, subject to the Requirements and Conditions and Exclusions set forth below:

REQUIREMENTS

1. The Company issues or is contractually obligated to issue a Policy for Your protection in connection with the Real Estate Transaction;
2. You are to be a:
 - a. lender secured by the Insured Mortgage on the Title to the Land; or
 - b. purchaser or lessee of the Title to the Land;
3. The aggregate of all Funds You transmit to the Issuing Agent or Approved Attorney for the Real Estate Transaction does not exceed \$_____; and
4. Your loss is solely caused by:

- a. a failure of the Issuing Agent or Approved Attorney to comply with Your written closing instructions that relate to:
 - i. (a). the disbursement of Funds necessary to establish the status of the Title to the Land; or
 - (b). the validity, enforceability, or priority of the lien of the Insured Mortgage; or
 - ii. obtaining any document, specifically required by You, but only to the extent that the failure to obtain the document adversely affects the status of the Title to the Land or the validity, enforceability, or priority of the lien of the Insured Mortgage on the Title to the Land; or
- b. fraud, theft, dishonesty, or misappropriation by the Issuing Agent or Approved Attorney in handling Your Funds or documents in connection with the closing, but only to the extent that the fraud, theft, dishonesty, or misappropriation adversely affects the status of the Title to the Land or the validity, enforceability, or priority of the lien of the Insured Mortgage on the Title to the Land.

CONDITIONS AND EXCLUSIONS

1. Your transmittal of Funds or documents to the Issuing Agent or Approved Attorney for the Real Estate Transaction constitutes Your acceptance of this letter.
2. For purposes of this letter:
 - a. "Commitment" means the Company's written contractual agreement to issue the Policy.
 - b. "Funds" means the money received by the Issuing Agent or Approved Attorney for the Real Estate Transaction.
 - c. "Policy" means the contract or contracts of title insurance, each in a form adopted by the American Land Title Association, issued or to be issued by the Company in connection with the closing of the Real Estate Transaction.
 - d. "You" or "Your" means:
 - i. the Addressee of this letter;
 - ii. the borrower, if the Land is improved solely by a one-to-four family residence; and
 - iii. subject to all rights and defenses relating to a claim under this letter that the Company would have against the Addressee,
 - (a). the assignee of the Insured Mortgage, provided such assignment was for value and the assignee was, at the time of the assignment, without Knowledge of facts that reveal a claim under this letter; and
 - (b). the warehouse lender in connection with the Insured Mortgage.
 - e. "Indebtedness," "Insured Mortgage," "Knowledge" or "Known," "Land," and "Title" have the same meaning given them in the American Land Title Association Loan Policy.

3. The Company is not liable under this letter for any loss arising from any:
- a. failure of the Issuing Agent or Approved Attorney to comply with Your closing instructions that require title insurance protection in connection with the Real Estate Transaction inconsistent with that set forth in the Commitment. Your written closing instructions received and accepted by the Issuing Agent or Approved Attorney after issuing the Commitment that require the removal, where allowed by state law, rule, or regulation, of specific Schedule B Exceptions from Coverage or compliance with the requirements contained in the Commitment will not be deemed to require inconsistent title insurance protection;
 - b. loss or impairment of Funds in the course of collection or while on deposit with a bank due to bank failure, insolvency, or suspension, except loss or impairment resulting from failure of the Issuing Agent or Approved Attorney to comply with Your written closing instructions to deposit Your Funds in a bank that You designated by name;
 - c. constitutional or statutory lien or claim of lien that arises from services, labor, materials, or equipment, if any Funds are to be used for the purpose of construction, alteration, or renovation. Condition and Exclusion 3.c. does not modify or limit Your coverage, if any, as to any lien for services, labor, materials, or equipment in the Policy;
 - d. defect, lien, encumbrance, adverse claim, or other matter in connection with the Real Estate Transaction. Condition and Exclusion 3.d. does not modify or limit Your coverage in the Policy;
 - e. fraud, theft, dishonesty, misappropriation, or negligence by You or by Your employee, agent, attorney, or broker;
 - f. fraud, theft, dishonesty, or misappropriation by anyone other than the Company, Issuing Agent, or Approved Attorney;
 - g. settlement or release of any claim by You without the Company's written consent;
 - h. matters created, suffered, assumed, agreed to, or Known by You;
 - i. failure of the Issuing Agent or Approved Attorney to determine the validity, enforceability, or the effectiveness of a document required by Your closing instructions. Condition and Exclusion 3.i. does not modify or limit Your coverage in the Policy;
 - j. Any law regulating trade, lending, credit, sale, and debt collection practices involving consumers; any consumer financial law; or any other law relating to truth-in-lending, predatory lending, or a borrower's ability to repay a loan, including any failure of the Issuing Agent or Approved Attorney to comply with Your closing instructions relating to those laws;
 - k. federal or state laws establishing the standards or requirements for asset-backed securitization including, but not limited to, exemption from credit risk retention, including any failure of the Issuing Agent or Approved Attorney to comply with Your closing instructions relating to those laws;
 - l. periodic disbursement of Funds to pay for construction, alteration, or renovation on the Land;

m. Issuing Agent or Approved Attorney acting in the capacity of a qualified intermediary or facilitator for tax deferred exchange transactions as provided in Section 1031 of the Internal Revenue Code; or

n. wire fraud, mail fraud, telephone fraud, facsimile fraud, unauthorized access to a computer, network, email, or document production system, business email compromise, identity theft, or diversion of Funds to a person or account not entitled to receive the Funds.

Condition and Exclusion 3.n. does not modify or limit:

i. Your coverage in the Policy; or

ii. indemnification in this letter for Your loss solely caused by fraud, theft, dishonesty, or misappropriation by the Issuing Agent or Approved Attorney in handling Your Funds or documents in connection with the closing, but only to the extent that the fraud, theft, dishonesty, or misappropriation adversely affects the status of the Title to the Land or the validity, enforceability, or priority of the lien of the Insured Mortgage on the Title to the Land.

4. If the closing is to be conducted by an Approved Attorney, a Commitment in connection with the Real Estate Transaction must have been received by You prior to the transmittal of Your final closing instructions to the Approved Attorney.

5. When the Company indemnifies You pursuant to this letter, it is subrogated to all rights and remedies You have against any person, entity, or property had You not been indemnified. The Company's liability for indemnification is reduced to the extent that You have impaired the value of this subrogation right.

6. The Company's liability for loss under this letter does not exceed the least of:

a. the amount of Your Funds;

b. the Company's liability under the Policy at the time written notice of a claim is made under this letter;

c. the value of the lien of the Insured Mortgage;

d. the value of the Title to the Land insured or to be insured under the Policy at the time written notice of a claim is made under this letter; or

e. the amount stated in Requirement 3.

7. The Company is liable only to the owner of the Indebtedness at the time that payment is made. Condition and Exclusion 7 does not apply to a purchaser, borrower, or lessee.

8. Payment to You or to the owner of the Indebtedness under either the Policy or from any other source reduces liability under this letter by the same amount. Payment in accordance with the terms of this letter constitutes a payment pursuant to the Conditions of the Policy.

- 9.** The Issuing Agent is the Company's agent only for the limited purpose of issuing 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 loss arising from closing or settlement services is strictly limited to the contractual protection expressly provided in this letter. The Company is not liable for loss resulting from the fraud, theft, dishonesty, misappropriation, or negligence of any party to the Real Estate Transaction, 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.
- 10.** The Company is not liable for a loss if the written notice of a claim is not received by the Company within one year from the date of the transmittal of Funds. The condition that the Company must be provided with written notice under Condition and Exclusion 10 will not be excused by lack of prejudice to the Company.
- 11.** 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 is reduced to the extent of the prejudice.
- 12.** When requested by the Company, You, at the Company's expense, must:
- a. give the Company all reasonable aid in:
 - i. securing evidence, obtaining witnesses, prosecuting or defending any action or proceeding, or effecting any settlement; and
 - ii. any other lawful act that in the opinion of the Company may be necessary or desirable to enable the Company's investigation and determination of its liability under this letter;
 - b. deliver to the Company all records, in whatever medium maintained, that pertain to the Real Estate Transaction or any claim under this letter; and
 - c. submit to examination under oath by any authorized representative of the Company with respect to any such records, the Real Estate Transaction, any claim under this letter or any other matter reasonably deemed relevant by the Company.
- 13.** The Company is not liable under this letter if:
- a. the Real Estate Transaction has not closed within one year from the Date of this letter; or
 - b. at any time after the Date of this letter, but before the Real Estate Transaction closes, the Company provides written notice of termination of this letter to the Addressee at the address set forth above.
- 14.** The protection of this letter extends only to real estate in [State], and any court or arbitrator must apply the law of that state to interpret and enforce the terms of this letter. The court or arbitrator must not apply conflicts of law principles to determine the applicable law. Any litigation or other proceeding under this letter must be filed

only in a state or federal court within the United States of America or its territories having jurisdiction.

This letter supersedes and cancels any previous letter or similar agreement for closing protection that applies to the Real Estate Transaction and may not be modified by the Issuing Agent or Approved Attorney.

[Witness clause optional]

[DATE]

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.)

**NM FORM 81.1: CLOSING PROTECTION LETTER
MULTIPLE TRANSACTIONS
issued by
BLANK TITLE INSURANCE COMPANY**

“Addressee”:

“Date”:

“Issuing Agent” or “Approved Attorney”:

[Issuing Office:

Issuing Office’s ALTA® Registry ID:]

Re: Closing Protection Letter

Dear

In consideration of Your acceptance of this letter, [*Blank Title Insurance Company*] (the “Company”), agrees to indemnify You for actual loss of Funds incurred by You in connection with the closing of any real estate transaction (the “Real Estate Transaction”) conducted by the Issuing Agent or Approved Attorney on or after the Date of this letter, subject to the Requirements and Conditions and Exclusions set forth below:

REQUIREMENTS

1. The Company issues or is contractually obligated to issue a Policy for Your protection in connection with the Real Estate Transaction;
2. You are to be a lender secured by the Insured Mortgage on the Title to the Land;
3. The aggregate of all Funds You transmit to the Issuing Agent or Approved Attorney for the Real Estate Transaction does not exceed \$_____; and
4. Your loss is solely caused by:
 - a. a failure of the Issuing Agent or Approved Attorney to comply with Your written closing instructions that relate to:
 - i. (a). the disbursement of Funds necessary to establish the status of the Title to the Land; or
 - (b). the validity, enforceability, or priority of the lien of the Insured Mortgage; or
 - ii. obtaining any document, specifically required by You, but only to the extent that the failure to obtain the document adversely affects the

status of the Title to the Land or the validity, enforceability, or priority of the lien of the Insured Mortgage on the Title to the Land; or

b. fraud, theft, dishonesty, or misappropriation by the Issuing Agent or Approved Attorney in handling Your Funds or documents in connection with the closing, but only to the extent that the fraud, theft, dishonesty, or misappropriation adversely affects the status of the Title to the Land or the validity, enforceability, or priority of the lien of the Insured Mortgage on the Title to the Land.

CONDITIONS AND EXCLUSIONS

1. Your transmittal of Funds or documents to the Issuing Agent or Approved Attorney for the Real Estate Transaction constitutes Your acceptance of this letter.

2. For purposes of this letter:

a. "Commitment" means the Company's written contractual agreement to issue the Policy.

b. "Funds" means the money received by the Issuing Agent or Approved Attorney for the Real Estate Transaction.

c. "Policy" means the contract or contracts of title insurance, each in a form adopted by the American Land Title Association, issued or to be issued by the Company in connection with the closing of the Real Estate Transaction.

d. "You" or "Your" means:

i. the Addressee of this letter;

ii. the borrower, if the Land is improved solely by a one-to-four family residence; and

iii. subject to all rights and defenses relating to a claim under this letter that the Company would have against the Addressee,

(a). the assignee of the Insured Mortgage, provided such assignment was for value and the assignee was, at the time of the assignment, without Knowledge of facts that reveal a claim under this letter; and

(b). the warehouse lender in connection with the Insured Mortgage.

e. "Indebtedness," "Insured Mortgage," "Knowledge" or "Known," "Land," and "Title" have the same meaning given them in the American Land Title Association Loan Policy.

3. The Company is not liable under this letter for any loss arising from any:

a. failure of the Issuing Agent or Approved Attorney to comply with Your closing instructions that require title insurance protection in connection with the Real Estate Transaction inconsistent with that set forth in the Commitment. Your written closing instructions received and accepted by the Issuing Agent or Approved Attorney after issuing the Commitment that require the removal, where allowed by state law, rule, or regulation, of specific Schedule B Exceptions from Coverage or compliance with the requirements contained in

the Commitment will not be deemed to require inconsistent title insurance protection;

b. loss or impairment of Funds in the course of collection or while on deposit with a bank due to bank failure, insolvency, or suspension, except loss or impairment resulting from failure of the Issuing Agent or Approved Attorney to comply with Your written closing instructions to deposit Your Funds in a bank that You designated by name;

c. constitutional or statutory lien or claim of lien that arises from services, labor, materials, or equipment, if any Funds are to be used for the purpose of construction, alteration, or renovation. Condition and Exclusion 3.c. does not modify or limit Your coverage, if any, as to any lien for services, labor, materials, or equipment in the Policy;

d. defect, lien, encumbrance, adverse claim, or other matter in connection with the Real Estate Transaction. Condition and Exclusion 3.d. does not modify or limit Your coverage in the Policy;

e. fraud, theft, dishonesty, misappropriation, or negligence by You or by Your employee, agent, attorney, or broker;

f. fraud, theft, dishonesty, or misappropriation by anyone other than the Company, Issuing Agent, or Approved Attorney;

g. settlement or release of any claim by You without the Company's written consent;

h. matters created, suffered, assumed, agreed to, or Known by You;

i. failure of the Issuing Agent or Approved Attorney to determine the validity, enforceability, or the effectiveness of a document required by Your closing instructions. Condition and Exclusion 3.i. does not modify or limit Your coverage in the Policy;

j. Any law regulating trade, lending, credit, sale, and debt collection practices involving consumers; any consumer financial law; or any other law relating to truth-in-lending, predatory lending, or a borrower's ability to repay a loan, including any failure of the Issuing Agent or Approved Attorney to comply with Your closing instructions relating to those laws;

k. federal or state laws establishing the standards or requirements for asset-backed securitization including, but not limited to, exemption from credit risk retention, including any failure of the Issuing Agent or Approved Attorney to comply with Your closing instructions relating to those laws;

l. periodic disbursement of Funds to pay for construction, alteration, or renovation on the Land;

m. Issuing Agent or Approved Attorney acting in the capacity of a qualified intermediary or facilitator for tax deferred exchange transactions as provided in Section 1031 of the Internal Revenue Code; or

n. wire fraud, mail fraud, telephone fraud, facsimile fraud, unauthorized access to a computer, network, email, or document production system, business email compromise, identity theft, or diversion of Funds to a person or account not entitled to receive the Funds. Condition and Exclusion 3.n. does not modify or limit:

- i. Your coverage in the Policy; or
 - ii. indemnification in this letter for Your loss solely caused by fraud, theft, dishonesty, or misappropriation by the Issuing Agent or Approved Attorney in handling Your Funds or documents in connection with the closing, but only to the extent that the fraud, theft, dishonesty, or misappropriation adversely affects the status of the Title to the Land or the validity, enforceability, or priority of the lien of the Insured Mortgage on the Title to the Land.
- 4. If the closing is to be conducted by an Approved Attorney, a Commitment in connection with the Real Estate Transaction must have been received by You prior to the transmittal of Your final closing instructions to the Approved Attorney.
- 5. When the Company indemnifies You pursuant to this letter, it is subrogated to all rights and remedies You have against any person, entity, or property had You not been indemnified. The Company's liability for indemnification is reduced to the extent that You have impaired the value of this subrogation right.
- 6. The Company's liability for loss under this letter does not exceed the least of:
 - a. the amount of Your Funds;
 - b. the Company's liability under the Policy at the time written notice of a claim is made under this letter;
 - c. the value of the lien of the Insured Mortgage;
 - d. the value of the Title to the Land insured or to be insured under the Policy at the time written notice of a claim is made under this letter; or
 - e. the amount stated in Requirement 3.
- 7. The Company is liable only to the owner of the Indebtedness at the time that payment is made. Condition and Exclusion 7 does not apply to a purchaser, borrower, or lessee.
- 8. Payment to You or to the owner of the Indebtedness under either the Policy or from any other source reduces liability under this letter by the same amount. Payment in accordance with the terms of this letter constitutes a payment pursuant to the Conditions of the Policy.
- 9. The Issuing Agent is the Company's agent only for the limited purpose of issuing 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 loss arising from closing or settlement services is strictly limited to the contractual protection expressly provided in this letter. The Company is not liable for loss resulting from the fraud, theft, dishonesty, misappropriation, or negligence of any party to the Real Estate Transaction, 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.

10. The Company is not liable for a loss if the written notice of a claim is not received by the Company within one year from the date of the transmittal of Funds. The condition that the Company must be provided with written notice under Condition and Exclusion 10 will not be excused by lack of prejudice to the Company.

11. 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 is reduced to the extent of the prejudice.

12. When requested by the Company, You, at the Company's expense, must:

- a. give the Company all reasonable aid in:
 - i. securing evidence, obtaining witnesses, prosecuting or defending any action or proceeding, or effecting any settlement; and
 - ii. any other lawful act that in the opinion of the Company may be necessary or desirable to enable the Company's investigation and determination of its liability under this letter;
- b. deliver to the Company all records, in whatever medium maintained, that pertain to the Real Estate Transaction or any claim under this letter; and
- c. submit to examination under oath by any authorized representative of the Company with respect to any such records, the Real Estate Transaction, any claim under this letter or any other matter reasonably deemed relevant by the Company.

13. The Company is not liable under this letter if:

- a. the Real Estate Transaction has not closed within one year from the Date of this letter; or
- b. at any time after the Date of this letter, but before the Real Estate Transaction closes, the Company provides written notice of termination of this letter to the Addressee at the address set forth above.

14. The protection of this letter extends only to real estate in [State], and any court or arbitrator must apply the law of that state to interpret and enforce the terms of this letter. The court or arbitrator must not apply conflicts of law principles to determine the applicable law. Any litigation or other proceeding under this letter must be filed only in a state or federal court within the United States of America or its territories having jurisdiction.

This letter supersedes and cancels any previous letter or similar agreement for closing protection that applies to the Real Estate Transaction and may not be modified by the Issuing Agent or Approved Attorney.

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.)

NM FORM 83: CONSTRUCTION LOAN ENDORSEMENT

This endorsement is issued as part of

Policy Number _____

issued by

BLANK TITLE INSURANCE COMPANY

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. "Construction Loan Advance": An advance that constitutes Indebtedness made on or before the Date of Coverage for the purpose of financing in whole or in part the construction of improvements on the Land.
 - b. "Date of Coverage": _____ [Drafting Instructions: Insert a specific date], unless the Company sets a different Date of Coverage by a NM FORM 84 Disbursement Endorsement issued at the discretion of the Company.
 - c. "Mechanic's Lien": Any statutory lien or claim of lien under State law, 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 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 the 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 lien or claim of lien arising from services, labor, material, or equipment:

a. Furnished after the 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 the 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 the policy and of any prior endorsements.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

NM FORM 83.1: CONSTRUCTION LOAN—DIRECT PAYMENT ENDORSEMENT

This endorsement is issued as part of
Policy Number _____
issued by
BLANK TITLE INSURANCE COMPANY

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. "Construction Loan Advance:" An advance that constitutes Indebtedness made on or before the Date of Coverage for the purpose of financing in whole or in part the construction of improvements on the Land.
 - b. "Date of Coverage": _____ [Drafting Instructions: Insert a specific date], unless the Company sets a different Date of Coverage by a NM FORM 84 Disbursement Endorsement issued at the discretion of the Company.
 - c. "Mechanic's Lien": Any statutory lien or claim of lien under State law, 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 lien or claim of lien arising from services, labor, material, or equipment:
 - a. Furnished after the 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 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]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

**NM FORM 83.2: CONSTRUCTION LOAN—INSURED’S DIRECT PAYMENT
ENDORSEMENT**

**This endorsement is issued as part of
Policy Number _____
issued by
BLANK TITLE INSURANCE COMPANY**

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. “Construction Loan Advance”: An advance that constitutes Indebtedness made on or before the Date of Coverage for the purpose of financing in whole or in part the construction of improvements on the Land.
 - b. “Date of Coverage”: _____ *[Drafting Instructions: Insert Specific Date]* unless the Company sets a different Date of Coverage by a NM FORM 84 Disbursement Endorsement issued at the discretion of the Company.
 - c. “Mechanic’s Lien”: Any statutory lien or claim of lien under State law, 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 the 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 lien or claim of lien arising from services, labor, materials, or equipment:

a. Furnished after the 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]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

NM FORM 84: DISBURSEMENT ENDORSEMENT

This endorsement is issued as part of

Policy Number _____

Issued by

BLANK TITLE INSURANCE COMPANY

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]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

NM FORM 85: IDENTIFIED RISK ENDORSEMENT

This endorsement is issued as part of

Policy Number_____

Issued by

BLANK TITLE INSURANCE COMPANY

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]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

NM FORM 86: POLICY AUTHENTICATION ENDORSEMENT**This endorsement is issued as part of****Policy Number _____****Issued by****BLANK TITLE INSURANCE COMPANY**

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.

IN WITNESS WHEREOF, the Company has caused this endorsement to be issued and become valid when signed by an authorized officer or licensed agent of the Company.

[Witness clause]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

**NM FORM 88: ENERGY PROJECT – LEASEHOLD/EASEMENT OWNER’S POLICY
ENDORSEMENT**

**This endorsement is issued as part of
Policy Number _____**

**Issued by
BLANK TITLE INSURANCE COMPANY**

1. The insurance provided by this endorsement is subject to the exclusions in Section 6 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For purposes of this endorsement only:
 - a. “Constituent Parcel” means one of the parcels of Land described in Schedule A that together constitute one integrated project.
 - b. “Easement” means each easement described in Schedule A.
 - c. “Easement Interest” means the right of use granted in the Easement for the Easement Term.
 - d. “Easement Term” means the duration of the Easement Interest, as set forth in the Easement, including any renewal or extended term if a valid option to renew or extend is contained in the Easement.
 - e. “Electricity Facility” means an electricity generating facility which may include one or more of the following: a substation; a transmission, distribution or collector line; an interconnection, inverter, transformer, generator, turbine, array, solar panel, or module; a circuit breaker, footing, tower, pole, cross-arm, guy line, anchor, wire, control system, communications or radio relay system, safety protection facility, road, and other building, structure, fixture, machinery, equipment, appliance and item associated with or incidental to the generation, conversion, storage, switching, metering, step-up, step-down, inversion, transmission, conducting, wheeling, sale or other use or conveyance of electricity, on the Land at Date of Policy or to be built or constructed on the Land in the locations according to the Plans, that by law constitutes real property.
 - f. “Evicted” or “Eviction” means (a) the lawful deprivation, in whole or in part, of the right of possession or use insured by this policy, contrary to the terms of any Lease or Easement or (b) the lawful prevention of the use of the Land or any Electricity Facility or Severable Improvement for the purposes permitted by the Lease or the Easement, as applicable, in either case as a result of a matter covered by this policy.
 - g. “Lease” means each lease described in Schedule A.

h. "Leasehold Estate" means the right of possession granted in the Lease for the Lease Term.

i. "Lease Term" means 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.

j. "Plans" means the survey, site and elevation plans or other depictions or drawings prepared by *(insert name of architect or engineer)* dated____, last revised, designated as *(insert name of project or project number)* consisting of ____ sheets.

k. "Remaining Term" means the portion of the Easement Term or the Lease Term remaining after the Insured has been Evicted.

l. "Severable Improvement" means property affixed to the Land at Date of Policy or to be affixed in the locations according to the Plans, that would constitute an Electricity Facility but for its characterization as personal property, and that by law does not constitute real property because (a) of its character and manner of attachment to the Land and (b) the property can be severed from the Land without causing material damage to the property or to the Land.

3. Valuation of Title as an Integrated Project:

a. If in computing loss or damage it becomes necessary to value the Title, or any portion of it, as the result of an Eviction, then, as to that portion of the Land from which the Insured is Evicted, that value shall consist of (i) the value of (A) the Leasehold Estate or the Easement Interest for the Remaining Term, as applicable, (B) any Electricity Facility existing on the date of the Eviction, and, if applicable, (ii) any reduction in value of another insured Lease or Easement as computed in Section 3(b) below.

b. A computation of loss or damage resulting from an Eviction affecting any Constituent Parcel shall include loss or damage to the integrated project caused by the covered matter affecting the Constituent Parcel from which the Insured is Evicted.

c. The Insured Claimant shall have the right to have the Leasehold Estate, the Easement Interest, and any Electricity Facility affected by a defect insured against by this policy valued either as a whole or separately. In either event, this determination of value shall take into account any rent or use payments no longer required to be paid for the Remaining Term.

d. The provisions of this Section 3 shall not diminish the Insured's rights under any other endorsement to the policy; however, the calculation of loss or damage pursuant to this endorsement shall not allow duplication of recovery for loss or damage calculated pursuant to Section 8 of the Conditions or any other endorsement to the policy.

4. Valuation of Severable Improvements:

a. In the event of an Eviction, the calculation of the loss shall include (but not to the extent that these items of loss are included in the valuation of the Title determined pursuant to Section 8 of the Conditions or any other provision of this or any other endorsement) the diminution in value of the Insured's interest in any Severable Improvement resulting from the Eviction, reduced by the salvage value of the Severable Improvement.

b. The policy does not insure against loss or damage (and the Company will not pay any costs, attorneys' fees or expenses) relating to:

- i. the attachment, perfection or priority of any security interest in any Severable Improvement;
- ii. the vesting or ownership of title to or rights in any Severable Improvement;
- iii. any defect in or lien or encumbrance on the title to any Severable Improvement; or
- iv. the determination of whether any specific property is real or personal in nature.

5. 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 3 of this endorsement, the valuation of Severable Improvements pursuant to Section 4 of this endorsement, or Section 8(a)(ii) of the Conditions.

a. The reasonable cost of: (i) disassembling, removing, relocating and reassembling any Severable Improvement that the Insured has the right to remove and relocate, situated on the Land at the time of Eviction, to the extent necessary to restore and make functional the integrated project; (ii) transportation of that Severable Improvement for the initial one hundred miles incurred in connection with the restoration or relocation; and (iii) restoring the Land to the extent damaged as a result of the disassembly, removal and relocation of the Severable Improvement and required of the Insured solely because of the Eviction.

b. Rent, easement payments or damages for use and occupancy of the Land prior to the Eviction that the Insured as owner of the Leasehold Estate or the Easement Interest, as applicable, may be obligated to pay to any person having paramount title to that of the lessor in the Lease or the grantor in the Easement, as applicable.

c. The amount of rent, easement payments or damages that, by the terms of the Lease or the Easement, as applicable, the Insured must continue to pay to the lessor or grantor after Eviction with respect to the portion of the Leasehold Estate or Easement Interest, as applicable, 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, sublease or easement specifically permitted by the Lease or Easement, as applicable, and made by the Insured as lessor or grantor of all or part of the Leasehold Estate or Easement Interest, as applicable.

e. Damages caused by the Eviction that the Insured is obligated to pay to lessees or sublessees or easement or subeasement grantees on account of the breach of any lease or sublease or easement or subeasement specifically permitted by the Lease or the Easement, as applicable, and made by the Insured as lessor or grantor of all or part of the Leasehold Estate or Easement Interest, as applicable.

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 or a replacement easement reasonably equivalent to the Easement Interest, as applicable.

g. If any Electricity Facility is not substantially completed at the time of Eviction, the actual cost incurred by the Insured up to the time of Eviction, less the salvage value, for the Electricity Facility located on that portion of the Land from which the Insured is Evicted. Those costs include costs incurred to construct and fabricate the Electricity Facility, obtain land use, zoning, building and occupancy permits, architectural and engineering services, construction management services, environmental testing and reviews, and landscaping, and cancellation fees related to the foregoing.

6. 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]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

**NM FORM 88.1: ENERGY PROJECT – LEASEHOLD/EASEMENT – LOAN POLICY
ENDORSEMENT**

This endorsement is issued as part of
Policy Number _____

Issued by
BLANK TITLE INSURANCE COMPANY

1. The insurance provided by this endorsement is subject to the exclusions in Section 6 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For purposes of this endorsement only:
 - a. “Constituent Parcel” means one of the parcels of Land described in Schedule A that together constitute one integrated project.
 - b. “Easement” means each easement described in Schedule A.
 - c. “Easement Interest” means the right of use granted in the Easement for the Easement Term.
 - d. “Easement Term” means the duration of the Easement Interest, as set forth in the Easement, including any renewal or extended term if a valid option to renew or extend is contained in the Easement.
 - e. “Electricity Facility” means an electricity generating facility which may include one or more of the following: a substation; a transmission, distribution or collector line; an interconnection, inverter, transformer, generator, turbine, array, solar panel, or module; a circuit breaker, footing, tower, pole, cross-arm, guy line, anchor, wire, control system, communications or radio relay system, safety protection facility, road, and other building, structure, fixture, machinery, equipment, appliance and item associated with or incidental to the generation, conversion, storage, switching, metering, step-up, step-down, inversion, transmission, conducting, wheeling, sale or other use or conveyance of electricity, on the Land at Date of Policy or to be built or constructed on the Land in the locations according to the Plans, that by law constitutes real property.
 - f. “Evicted” or “Eviction” means (a) the lawful deprivation, in whole or in part, of the right of possession or use insured by this policy, contrary to the terms of any Lease or Easement or (b) the lawful prevention of the use of the Land or any Electricity Facility or Severable Improvement for the purposes permitted by the Lease or the Easement, as applicable, in either case as a result of a matter covered by this policy.

- g. "Lease" means each lease described in Schedule A.
- h. "Leasehold Estate" means the right of possession granted in the Lease for the Lease Term
- i. "Lease Term" means 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.
- j. "Plans" means the survey, site and elevation plans or other depictions or drawings prepared by (insert name of architect or engineer) dated ____, last revised ____, designated as (insert name of project or project number) consisting of ____ sheets.
- k. "Remaining Term" means the portion of the Easement Term or the Lease Term remaining after the Insured has been Evicted.
- l. "Severable Improvement" means property affixed to the Land at Date of Policy or to be affixed in the locations according to the Plans, that would constitute an Electricity Facility but for its characterization as personal property, and that by law does not constitute real property because (a) of its character and manner of attachment to the Land and (b) the property can be severed from the Land without causing material damage to the property or to the Land.
- m. "Tenant" means the tenant under the Lease or a grantee under the Easement, as applicable, 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.
3. Valuation of Title as an Integrated Project:
- a. If in computing loss or damage it becomes necessary to value the Title, or any portion of it, as the result of an Eviction, then, as to that portion of the Land from which the Tenant is Evicted, that value shall consist of (i) the value of (A) the Leasehold Estate or the Easement Interest for the Remaining Term, as applicable, (B) any Electricity Facility existing on the date of the Eviction, and, if applicable, (ii) any reduction in value of another insured Lease or Easement as computed in Section 3(b) below.
- b. A computation of loss or damage resulting from an Eviction affecting any Constituent Parcel shall include loss or damage to the integrated project caused by the covered matter affecting the Constituent Parcel from which the Insured is Evicted.
- c. The Insured Claimant shall have the right to have the Leasehold Estate, the Easement Interest, and any Electricity Facility 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 any rent or use payments no longer required to be paid for the Remaining Term.

d. The provisions of this Section 3 shall not diminish the Insured's rights under any other endorsement to the policy; however, the calculation of loss or damage pursuant to this endorsement shall not allow duplication of recovery for loss or damage calculated pursuant to Section 8 of the Conditions or any other endorsement to the policy.

4. Valuation of Severable Improvements:

a. In the event of an Eviction, the calculation of the loss shall include (but not to the extent that these items of loss are included in the valuation of the Title determined pursuant to Section 8 of the Conditions or any other provision of this or any other endorsement) the diminution in value of the Insured's interest in any Severable Improvement resulting from the Eviction, reduced by the salvage value of the Severable Improvement.

b. The policy does not insure against loss or damage (and the Company will not pay any costs, attorneys' fees or expenses) relating to:

i. the attachment, perfection or priority of any security interest in any Severable Improvement;

ii. the vesting or ownership of title to or rights in any Severable Improvement;

iii. any defect in or lien or encumbrance on the title to any Severable Improvement; or

iv. the determination of whether any specific property is real or personal in nature.

5. 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 the 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 3 of this endorsement, the valuation of Severable Improvements pursuant to Section 4 of this endorsement, or Section 8(a)(iii) of the Conditions:

a. The reasonable cost of: (i) disassembling, removing, relocating and reassembling any Severable Improvement that the Insured has the right to remove and relocate, situated on the Land at the time of Eviction, to the extent necessary to restore and make functional the integrated project; (ii) transportation of that Severable Improvement for the initial one hundred miles incurred in connection with the restoration or relocation; and (iii) restoring the Land to the extent damaged as a result of the disassembly, removal and relocation of the Severable Improvement and required of the Insured solely because of the Eviction.

b. Rent, easement payments or damages for use and occupancy of the Land prior to the Eviction that the Insured as owner of the Leasehold Estate or the Easement Interest, as applicable, may be obligated to pay to any person having paramount title to that of the lessor in the Lease or the grantor in the Easement, as applicable.

c. The amount of rent, easement payments or damages that, by the terms of the Lease or the Easement, as applicable, the Insured must continue to pay to the lessor or grantor after Eviction with respect to the portion of the Leasehold Estate or Easement Interest, as applicable, 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, sublease or easement specifically permitted by the Lease or Easement, as applicable, and made by the Tenant as lessor or grantor of all or part of the Leasehold Estate or Easement Interest, as applicable.

e. Damages caused by the Eviction that the Insured is obligated to pay to lessees or sublessees or easement or subeasement grantees on account of the breach of any lease or sublease or easement or subeasement specifically permitted by the Lease or the Easement, as applicable, and made by the Tenant as lessor or grantor of all or part of the Leasehold Estate or Easement Interest, as applicable.

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 or a replacement easement reasonably equivalent to the Easement Interest, as applicable.

g. If any Electricity Facility is not substantially completed at the time of Eviction, the actual cost incurred by the Insured up to the time of Eviction, less the salvage value, for the Electricity Facility located on that portion of the Land from which the Insured is Evicted. Those costs include costs incurred to construct and fabricate the Electricity Facility, obtain land use, zoning, building and occupancy permits, architectural and engineering services, construction management services, environmental testing and reviews, and landscaping, and cancellation fees related to the foregoing.

6. 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]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

**NM FORM 88.2: ENERGY PROJECT – LEASEHOLD – OWNER’S POLICY
ENDORSEMENT**

**This endorsement is issued as part of
Policy Number _____
Issued by
BLANK TITLE INSURANCE COMPANY**

1. The insurance provided by this endorsement is subject to the exclusions in Section 6 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For purposes of this endorsement only:
 - a. “Constituent Parcel” means one of the parcels of Land described in Schedule A that together constitute one integrated project.
 - b. “Electricity Facility” means an electricity generating facility which may include one or more of the following: a substation; a transmission, distribution or collector line; an interconnection, inverter, transformer, generator, turbine, array, solar panel, or module; a circuit breaker, footing, tower, pole, cross-arm, guy line, anchor, wire, control system, communications or radio relay system, safety protection facility, road, and other building, structure, fixture, machinery, equipment, appliance and item associated with or incidental to the generation, conversion, storage, switching, metering, step-up, step-down, inversion, transmission, conducting, wheeling, sale or other use or conveyance of electricity, on the Land at Date of Policy or to be built or constructed on the Land in the locations according to the Plans, that by law constitutes real property.
 - c. “Evicted” or “Eviction” means (a) the lawful deprivation, in whole or in part, of the right of possession insured by this policy, contrary to the terms of any Lease or (b) the lawful prevention of the use of the Land or any Electricity Facility or Severable Improvement for the purposes permitted by the Lease, in either case as a result of a matter covered by this policy.
 - d. “Lease” means each lease described in Schedule A.
 - e. “Leasehold Estate” means the right of possession granted in the Lease for the Lease Term.
 - f. “Lease Term” means 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.
 - g. “Plans” means the survey, site and elevation plans or other depictions or drawings prepared by (insert name of architect or engineer) dated , last revised ,designated as (insert name of project or project number) consisting of sheets.

h. "Remaining Term" means the portion of the Lease Term remaining after the Insured has been Evicted.

i. "Severable Improvement" means property affixed to the Land at Date of Policy or to be affixed in the locations according to the Plans, that would constitute an Electricity Facility but for its characterization as personal property, and that by law does not constitute real property because (a) of its character and manner of attachment to the Land and (b) the property can be severed from the Land without causing material damage to the property or to the Land.

3. Valuation of Title as an Integrated Project:

a. If in computing loss or damage it becomes necessary to value the Title, or any portion of it, as the result of an Eviction, then, as to that portion of the Land from which the Insured is Evicted, that value shall consist of (i) the value of (A) the Leasehold Estate for the Remaining Term, (B) any Electricity Facility existing on the date of the Eviction, and, if applicable, (ii) any reduction in value of another insured Lease as computed in Section 3(b) below.

b. A computation of loss or damage resulting from an Eviction affecting any Constituent Parcel shall include loss or damage to the integrated project caused by the covered matter affecting the Constituent Parcel from which the Insured is Evicted.

c. The Insured Claimant shall have the right to have the Leasehold Estate and any Electricity Facility affected by a defect insured against by this policy valued either as a whole or separately. In either event, this determination of value shall take into account any rent no longer required to be paid for the Remaining Term.

d. The provisions of this Section 3 shall not diminish the Insured's rights under any other endorsement to the policy; however, the calculation of loss or damage pursuant to this endorsement shall not allow duplication of recovery for loss or damage calculated pursuant to Section 8 of the Conditions or any other endorsement to the policy.

4. Valuation of Severable Improvements:

a. In the event of an Eviction, the calculation of the loss shall include (but not to the extent that these items of loss are included in the valuation of the Title determined pursuant to Section 8 of the Conditions or any other provision of this or any other endorsement) the diminution in value of the Insured's interest in any Severable Improvement resulting from the Eviction, reduced by the salvage value of the Severable Improvement.

b. The policy does not insure against loss or damage (and the Company will not pay any costs, attorneys' fees or expenses) relating to:

i. the attachment, perfection or priority of any security interest in any Severable Improvement;

ii. the vesting or ownership of title to or rights in any Severable Improvement;

- iii. any defect in or lien or encumbrance on the title to any Severable Improvement;
- or
- iv. the determination of whether any specific property is real or personal in nature.

5. 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 3 of this endorsement, the valuation of Severable Improvements pursuant to Section 4 of this endorsement, or Section 8(a)(ii) of the Conditions.

- a. The reasonable cost of: (i) disassembling, removing, relocating and reassembling any Severable Improvement that the Insured has the right to remove and relocate, situated on the Land at the time of Eviction, to the extent necessary to restore and make functional the integrated project; (ii) transportation of that Severable Improvement for the initial one hundred miles incurred in connection with the restoration or relocation; and (iii) restoring the Land to the extent damaged as a result of the disassembly, removal and relocation of the Severable Improvement 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 or damages 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 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 specifically permitted by the Lease and made by the Insured as lessor of all or part of the Leasehold Estate.
- 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 specifically permitted by the Lease and made by the Insured as lessor of all or part of the Leasehold Estate.
- 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.
- g. If any Electricity Facility is not substantially completed at the time of Eviction, the actual cost incurred by the Insured up to the time of Eviction, less the salvage value, for the Electricity Facility located on that portion of the Land from which the Insured is Evicted. Those costs include costs incurred to construct and fabricate the Electricity Facility, obtain land use, zoning, building and occupancy permits, architectural and engineering services, construction

management services, environmental testing and reviews, and landscaping, and cancellation fees related to the foregoing.

6. 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]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
 Authorized Signatory

NM FORM 88.3: ENERGY PROJECT – LEASEHOLD – LOAN POLICY ENDORSEMENT

**This endorsement is issued as part of
Policy Number _____**

**Issued by
BLANK TITLE INSURANCE COMPANY**

1. The insurance provided by this endorsement is subject to the exclusions in Section 6 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the Policy.
2. For purposes of this endorsement only:
 - a. "Constituent Parcel" means one of the parcels of Land described in Schedule A that together constitute one integrated project.
 - b. "Electricity Facility" means an electricity generating facility which may include one or more of the following: a substation; a transmission, distribution or collector line; an interconnection, inverter, transformer, generator, turbine, array, solar panel, or module; a circuit breaker, footing, tower, pole, cross-arm, guy line, anchor, wire, control system, communications or radio relay system, safety protection facility, road, and other building, structure, fixture, machinery, equipment, appliance and item associated with or incidental to the generation, conversion, storage, switching, metering, step-up, step-down, inversion, transmission, conducting, wheeling, sale or other use or conveyance of electricity, on the Land at Date of Policy or to be built or constructed on the Land in the locations according to the Plans, that by law constitutes real property.
 - c. "Evicted" or "Eviction" means (a) the lawful deprivation, in whole or in part, of the right of possession insured by this policy, contrary to the terms of any Lease or (b) the lawful prevention of the use of the Land or any Electricity Facility or Severable Improvement for the purposes permitted by the Lease, in either case as a result of a matter covered by this policy.
 - d. "Lease" means each lease described in Schedule A.
 - e. "Leasehold Estate" means the right of possession granted in the Lease for the Lease Term.
 - f. "Lease Term" means 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.
 - g. "Plans" means the survey, site and elevation plans or other depictions or drawings prepared by (insert name of architect or engineer) dated , last revised ,designated as (insert name of project or project number) consisting of sheets.
 - h. "Remaining Term" means the portion of the Lease Term remaining after the Insured has been Evicted.
 - i. "Severable Improvement" means property affixed to the Land at Date of Policy or to be affixed in the locations according to the Plans, that would constitute an Electricity Facility but for its characterization as personal property, and that by law does not constitute real property because (a) of its character and manner of attachment to the Land and (b) the property can be severed from the Land without causing material damage to the property or to the Land.
 - j. "Tenant" means 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.

3. Valuation of Title as an Integrated Project:

a. If in computing loss or damage it becomes necessary to value the Title, or any portion of it, as the result of an Eviction, then, as to that portion of the Land from which the Tenant is Evicted, that value shall consist of (i) the value of (A) the Leasehold Estate for the Remaining Term, (B) any Electricity Facility existing on the date of the Eviction, and, if applicable, (ii) any reduction in value of another insured Lease as computed in Section 3(b) below.

b. A computation of loss or damage resulting from an Eviction affecting any Constituent Parcel shall include loss or damage to the integrated project caused by the covered matter affecting the Constituent Parcel from which the Insured is Evicted.

c. The Insured Claimant shall have the right to have the Leasehold Estate and any Electricity Facility 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 any rent no longer required to be paid for the Remaining Term.

d. The provisions of this Section 3 shall not diminish the Insured's rights under any other endorsement to the policy; however, the calculation of loss or damage pursuant to this endorsement shall not allow duplication of recovery for loss or damage calculated pursuant to Section 8 of the Conditions or any other endorsement to the policy.

4. Valuation of Severable Improvements: a. In the event of an Eviction, the calculation of the loss shall include (but not to the extent that these items of loss are included in the valuation of the Title determined pursuant to Section 8 of the Conditions or any other provision of this or any other endorsement) the diminution in value of the Insured's interest in any Severable Improvement resulting from the Eviction, reduced by the salvage value of the Severable Improvement.

b. The policy does not insure against loss or damage (and the Company will not pay any costs, attorneys' fees or expenses) relating to:

- i. the attachment, perfection or priority of any security interest in any Severable Improvement;
- ii. the vesting or ownership of title to or rights in any Severable Improvement;
- iii. any defect in or lien or encumbrance on the title to any Severable Improvement; or
- iv. the determination of whether any specific property is real or personal in nature.

5. 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 the 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 3 of this endorsement, the valuation of Severable Improvements pursuant to Section 4 of this endorsement, or Section 8(a)(iii) of the Conditions:

a. The reasonable cost of: (i) disassembling, removing, relocating and reassembling any Severable Improvement that the Insured has the right to remove and relocate, situated on the Land at the time of Eviction, to the extent necessary to restore and make functional the integrated project; (ii) transportation of that Severable Improvement for the initial one hundred miles incurred in connection with the restoration or relocation; and (iii) restoring the Land to the extent damaged as a result of the disassembly, removal and relocation of the Severable Improvement 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 or damages 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 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 specifically permitted by the Lease and made by the Tenant as lessor of all or part of the Leasehold Estate.

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 specifically permitted by the Lease and made by the Tenant as lessor of all or part of the Leasehold Estate.

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.

g. If any Electricity Facility is not substantially completed at the time of Eviction, the actual cost incurred by the Insured up to the time of Eviction, less the salvage value, for the Electricity Facility located on that portion of the Land from which the Insured is Evicted. Those costs include costs incurred to construct and fabricate the Electricity Facility, obtain land use, zoning, building and occupancy permits, architectural and engineering services, construction management services, environmental testing and reviews, and landscaping, and cancellation fees related to the foregoing.

6. 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]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

**NM FORM 88.4: ENERGY PROJECT – COVENANTS, CONDITIONS AND RESTRICTIONS
–LAND UNDER DEVELOPMENT – OWNER’S POLICY ENDORSEMENT**

This endorsement is issued as part of

Policy Number _____

Issued by

BLANK TITLE INSURANCE COMPANY

1. The insurance provided by this endorsement is subject to the exclusions in Section 4 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For purposes of this endorsement only:
 - a. “Covenant” means a covenant, condition, limitation or restriction in a document or instrument in effect at Date of Policy.
 - b. “Electricity Facility” means an electricity generating facility that may include one or more of the following: a substation; a transmission, distribution or collector line; an interconnection, inverter, transformer, generator, turbine, array, solar panel, or module; a circuit breaker, footing, tower, pole, cross-arm, guy line, anchor, wire, control system, communications or radio relay system, safety protection facility, road, and other building, structure, fixture, machinery, equipment, appliance and item associated with or incidental to the generation, conversion, storage, switching, metering, step-up, step-down, inversion, transmission, conducting, wheeling, sale or other use or conveyance of electricity, on the Land at Date of Policy or to be built or constructed on the Land in the locations according to the Plans, that by law constitutes real property.
 - c. “Plans” means the survey, site and elevation plans or other depictions or drawings prepared by (insert name of architect or engineer) dated , last revised , designated as (insert name of project or project number) consisting of sheets.
 - d. “Severable Improvement” means property affixed to the Land at Date of Policy or to be affixed to the Land in the locations according to the Plans, that would constitute an Electricity Facility but for its characterization as personal property, and that by law does not constitute real property because (a) of its character and manner of attachment to the Land and (b) the property can be severed from the Land without causing material damage to the property or to the Land.
3. The Company insures against loss or damage sustained by the Insured by reason of:
 - a. A violation of an enforceable Covenant by any Electricity Facility or Severable Improvement, unless an exception in Schedule B of the policy identifies the violation;

b. Enforced removal of any Electricity Facility or Severable Improvement as a result of a violation of a building setback line shown on a plat of subdivision recorded or filed in the Public Records, unless an exception in Schedule B of the policy identifies the violation; or

c. A notice of a violation, recorded in the Public Records at Date of Policy, of an enforceable Covenant relating to environmental protection, describing any part of the Land and referring to that Covenant, but only to the extent of the violation of the Covenant referred to in that notice, unless an exception in Schedule B of the policy identifies the notice of the violation.

4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:

a. any Covenant contained in an instrument creating a lease or easement;

b. any Covenant relating to obligations of any type to perform maintenance, repair, or remediation on the Land; or

c. except as provided in Section 3.c., any Covenant pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances.

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]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

**NM FORM 88.5: ENERGY PROJECT – COVENANTS, CONDITIONS AND RESTRICTIONS –
LAND UNDER DEVELOPMENT – LOAN ENDORSEMENT**

This endorsement is issued as part of

Policy Number _____

Issued by

BLANK TITLE INSURANCE COMPANY

1. The insurance provided by this endorsement is subject to the exclusions in Section 4 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.

2. For purposes of this endorsement only:

a. "Covenant" means a covenant, condition, limitation or restriction in a document or instrument in effect at Date of Policy.

b. "Electricity Facility" means an electricity generating facility that may include one or more of the following: a substation; a transmission, distribution or collector line; an interconnection, inverter, transformer, generator, turbine, array, solar panel, or module; a circuit breaker, footing, tower, pole, cross-arm, guy line, anchor, wire, control system, communications or radio relay system, safety protection facility, road, and other building, structure, fixture, machinery, equipment, appliance and item associated with or incidental to the generation, conversion, storage, switching, metering, step-up, step-down, inversion, transmission, conducting, wheeling, sale or other use or conveyance of electricity, on the Land at Date of Policy or to be built or constructed on the Land in the locations according to the Plans, that by law constitutes real property.

c. "Plans" means the survey, site and elevation plans or other depictions or drawings prepared by (insert name of architect or engineer) dated , last revised , designated as (insert name of project or project number) consisting of sheets.

d. "Severable Improvement" means property affixed to the Land at Date of Policy or to be affixed to the Land in the locations according to the Plans, that would constitute an Electricity Facility but for its characterization as personal property, and that by law does not constitute real property because (a) of its character and manner of attachment to the Land and (b) the property can be severed from the Land without causing material damage to the property or to the Land.

3. The Company insures against loss or damage sustained by the Insured by reason of:

a. A violation of a Covenant that:

i. divests, subordinates, or extinguishes the lien of the Insured Mortgage;

ii. results in the invalidity, unenforceability, or lack of priority of the lien of the Insured Mortgage; or

iii. causes a loss of the Insured's Title acquired in satisfaction or partial satisfaction of the Indebtedness.

- b. A violation of an enforceable Covenant by any Electricity Facility or Severable Improvement, unless an exception in Schedule B of the policy identifies the violation;
 - c. Enforced removal of any Electricity Facility or Severable Improvement, as a result of a violation of a building setback line shown on a plat of subdivision recorded or filed in the Public Records, unless an exception in Schedule B of the policy identifies the violation; or
 - d. A notice of a violation, recorded in the Public Records at Date of Policy, of an enforceable Covenant relating to environmental protection, describing any part of the Land and referring to that Covenant, but only to the extent of the violation of the Covenant referred to in that notice, unless an exception in Schedule B of the policy identifies the notice of the violation.
4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:
- a. any Covenant contained in an instrument creating a lease or easement;
 - b. any Covenant relating to obligations of any type to perform maintenance, repair, or remediation on the Land; or
 - c. except as provided in Section 3.d., any Covenant pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances.

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]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
 Authorized Signatory

NM FORM 88.6: ENERGY PROJECT – ENCROACHMENTS ENDORSEMENT

This endorsement is issued as part of
Policy Number _____
Issued by
BLANK TITLE INSURANCE COMPANY

1. The insurance provided by this endorsement is subject to the exclusions in Section 4 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For purposes of this endorsement only:
 - a. “Electricity Facility” means an electricity generating facility that may include one or more of the following: a substation; a transmission, distribution or collector line; an interconnection, inverter, transformer, generator, turbine, array, solar panel, or module; a circuit breaker, footing, tower, pole, cross-arm, guy line, anchor, wire, control system, communications or radio relay system, safety protection facility, road, and other building, structure, fixture, machinery, equipment, appliance and item associated with or incidental to the generation, conversion, storage, switching, metering, step-up, step-down, inversion, transmission, conducting, wheeling, sale or other use or conveyance of electricity, on the Land at Date of Policy or to be built or constructed on the Land in the locations according to the Plans, that by law constitutes real property.
 - b. “Plans” means the survey, site and elevation plans or other depictions or drawings prepared by (insert name of architect or engineer) dated , last revised , designated as (insert name of project or project number) consisting of sheets.
 - c. “Severable Improvement” means property affixed to the Land at Date of Policy or to be affixed to the Land in the locations according to the Plans, that would constitute an Electricity Facility but for its characterization as personal property, and that by law does not constitute real property because (a) of its character and manner of attachment to the Land and (b) the property can be severed from the Land without causing material damage to the property or to the Land.
3. The Company insures against loss or damage sustained by the Insured reason of:
 - a. An encroachment of any Electricity Facility or Severable Improvement located on the Land onto adjoining land or onto that portion of the Land subject to an easement, unless an exception in Schedule B of the policy identifies the encroachment;
 - b. An encroachment of an improvement located on adjoining land onto the Land at Date of Policy, unless an exception in Schedule B of the policy identifies the encroachment;
 - c. Enforced removal of any Electricity Facility or Severable Improvement, as a result of an encroachment by the Electricity Facility or Severable Improvement onto any portion of the Land

subject to any easement, in the event that the owners of the easement shall, for the purpose of exercising the right of use or maintenance of the easement, compel removal or relocation of the encroaching Electricity Facility or Severable Improvement;

d. Damage to any Electricity Facility or Severable Improvement that is located on or encroaches onto that portion of the Land subject to an easement excepted in Schedule B, which damage results from the exercise of the right to maintain the easement for the purpose for which it was granted or reserved ; or

e. The coverage of Sections 3.c. and 3.d. shall not apply to the encroachments listed in Exception(s) of Schedule B.

4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from contamination, explosion, fire, vibration, fracturing, earthquake or subsidence.

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]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
 Authorized Signatory

NM FORM 88.7: ENERGY PROJECT – FEE ESTATE – OWNER’S POLICY ENDORSEMENT

This endorsement is issued as part of

Policy Number_____

Issued by

BLANK TITLE INSURANCE COMPANY

1. The insurance provided by this endorsement is (a) only effective for the parcel or those parcels of the Land as to which the Title is fee simple and (b) subject to the exclusions in Section 6 of this endorsement and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.

2. For purposes of this endorsement only:

(a) “Constituent Parcel” means one of the parcels of Land described in Schedule A that together with any other parcel or parcels of Land described in Schedule A constitute one integrated project.

(b) “Electricity Facility” means an electricity generating facility which may include one or more of the following: a substation; a transmission, distribution or collector line; an interconnection, inverter, transformer, generator, turbine, array, solar panel, or module; a circuit breaker, footing, tower, pole, cross-arm, guy line, anchor, wire, control system, communications or radio relay system, safety protection facility, road, and other building, structure, fixture, machinery, equipment, appliance and item associated with or incidental to the generation, conversion, storage, switching, metering, step-up, step-down, inversion, transmission, conducting, wheeling, sale or other use or conveyance of electricity, on the Land at Date of Policy or to be built or constructed on the Land in the locations according to the Plans, that by law constitutes real property.

(c) “Ejected” or “Ejection” means (i) the lawful divestment, in whole or in part, of the Title to the Land or (ii) the lawful prevention of the use of the Land or any Electricity Facility or Severable Improvement, as applicable, in either case as a result of a matter covered by this policy.

(d) “Plans” means the survey, site and elevation plans or other depictions or drawings prepared by *(insert name of architect or engineer)* dated , last revised , designated as *(insert name of project or project number)* consisting of sheets.

(e) “Severable Improvement” means property affixed to the Land at Date of Policy or to be affixed in the locations according to the Plans, that would constitute an Electricity Facility but for its characterization as personal property, and that by law does not constitute real property because (a) of its character and manner of attachment to the Land and (b) the property can be severed from the Land without causing material damage to the property or to the Land.

3. Valuation of Title as an integrated project:

(a) If in computing loss or damage it becomes necessary to value the Title, or any portion of it, as the result of an Ejection, then, as to that portion of the Land from which the Insured is Ejected, that value shall consist of (i) the value of the fee estate including any Electricity Facility existing on the date of the Ejection, and, if applicable, (ii) any reduction in value of another insured Constituent Parcel as computed in Section 3(b) below.

(b) A computation of loss or damage resulting from an Ejection affecting any Constituent Parcel shall include loss or damage to the integrated project caused by the covered matter affecting the Constituent Parcel from which the Insured is Ejected.

(c) The Insured Claimant shall have the right to have the fee estate, any Constituent Parcel, and any Electricity Facility affected by a defect insured against by this policy valued either as a whole or separately.

(d) The provisions of this Section 3 shall not diminish the Insured's rights under any other endorsement to the policy; however, the calculation of loss or damage pursuant to this endorsement shall not allow duplication of recovery for loss or damage calculated pursuant to Section 8 of the Conditions or any other endorsement to the policy.

4. Valuation of Severable Improvements:

(a) In the event of an Ejection, the calculation of the loss shall include (but not to the extent that these items of loss are included in the valuation of the Title determined pursuant to Section 8 of the Conditions or any other provision of this or any other endorsement) the diminution in value of the Insured's interest in any Severable Improvement resulting from the Ejection, reduced by the salvage value of the Severable Improvement.

(b) The policy does not insure against loss or damage (and the Company will not pay any costs, attorneys' fees, or expenses) relating to: (i) the attachment, perfection or priority of any security interest in any Severable Improvement; (ii) the vesting or ownership of title to or rights in any Severable Improvement; (iii) any defect in or lien or encumbrance on the title to any Severable Improvement; or (iv) the determination of whether any specific property is real or personal in nature.

5. Additional items of loss covered by this endorsement:

If the Insured is Ejected, the following items of loss, if applicable to that portion of the Land from which the Insured is Ejected, 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 3 of this endorsement, the valuation of Severable Improvements pursuant to Section 4 of this endorsement, or Section 8(a)(ii) of the Conditions.

(a) The reasonable cost of: (i) disassembling, removing, relocating and reassembling any Severable Improvement that the Insured has the right to remove and relocate, situated on the Land at the time of Ejection, to the extent necessary to restore and make functional the integrated project; (ii) transportation of that Severable Improvement for the initial one hundred miles incurred in

connection with the restoration or relocation; and (iii) restoring the Land to the extent damaged as a result of the disassembly, removal and relocation of the Severable Improvement and required of the Insured solely because of the Ejection.

(b) Payments or damages for use and occupancy of the Land prior to the Ejection that the Insured may be obligated to pay to any person having paramount title to that of the Insured.

(c) The fair market value, at the time of the Ejection, of the estate or interest of the Insured in any lease or easement, as applicable, made by the Insured as lessor or grantor of all or part of the Title.

(d) Damages caused by the Ejection that the Insured is obligated to pay to lessees or easement grantees on account of the breach of any lease or easement, as applicable, made by the Insured as lessor or grantor of all or part of the Title.

(e) The reasonable cost to obtain land use, zoning, building and occupancy permits, architectural and engineering services and environmental testing and reviews for a fee estate in a replacement parcel of land reasonably equivalent to the parcel that is the subject of the Ejection.

(f) If any Electricity Facility is not substantially completed at the time of Ejection, the actual cost incurred by the Insured up to the time of Ejection, less the salvage value, for the Electricity Facility located on that portion of the Land from which the Insured is Ejected. Those costs include costs incurred to construct and fabricate the Electricity Facility, obtain land use, zoning, building and occupancy permits, architectural and engineering services, construction management services, environmental testing and reviews, landscaping, and cancellation fees related to the foregoing.

6. 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]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

NM FORM 88.8: ENERGY PROJECT – FEE ESTATE – LOAN POLICY ENDORSEMENT

This endorsement is issued as part of
Policy Number _____
Issued by
BLANK TITLE INSURANCE COMPANY

1. The insurance provided by this endorsement is (a) only effective for the parcel or those parcels of the Land as to which the Title is fee simple and (b) subject to the exclusions in Section 6 of this endorsement and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For purposes of this endorsement only:
 - (a) “Constituent Parcel” means one of the parcels of Land described in Schedule A that together with any other parcel or parcels of Land described in Schedule A constitute one integrated project.
 - (b) “Electricity Facility” means an electricity generating facility which may include one or more of the following: a substation; a transmission, distribution or collector line; an interconnection, inverter, transformer, generator, turbine, array, solar panel, or module; a circuit breaker, footing, tower, pole, cross-arm, guy line, anchor, wire, control system, communications or radio relay system, safety protection facility, road, and other building, structure, fixture, machinery, equipment, appliance and item associated with or incidental to the generation, conversion, storage, switching, metering, step-up, step-down, inversion, transmission, conducting, wheeling, sale, or other use or conveyance of electricity, on the Land at Date of Policy or to be built or constructed on the Land in the locations according to the Plans, that by law constitutes real property.
 - (c) “Ejected” or “Ejection” means (a) the lawful divestment, in whole or in part, of the Title to the Land or (b) the lawful prevention of the use of the Land or any Electricity Facility or Severable Improvement, as applicable, in either case as a result of a matter covered by this policy.
 - (d) “Plans” means the survey, site and elevation plans or other depictions or drawings prepared by *(insert name of architect or engineer)* dated , last revised , designated as *(insert name of project or project number)* consisting of sheets.
 - (e) “Severable Improvement” means property affixed to the Land at Date of Policy or to be affixed in the locations according to the Plans, that would constitute an Electricity Facility but for its characterization as personal property, and that by law does not constitute real property because (a) of its character and manner of attachment to the Land and (b) the property can be severed from the Land without causing material damage to the property or to the Land.
 - (f) “Vestee” means the party in which the Title is vested as stated in Schedule A 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.

3. Valuation of Title as an integrated project:

(a) If in computing loss or damage it becomes necessary to value the Title, or any portion of it, as the result of an Ejection, then, as to that portion of the Land from which the Vestee is Ejected, that value shall consist of (i) the value of the fee estate including any Electricity Facility existing on the date of the Ejection, and, if applicable, (ii) any reduction in value of another insured Constituent Parcel as computed in Section 3(b) below.

(b) A computation of loss or damage resulting from an Ejection affecting any Constituent Parcel shall include loss or damage to the integrated project caused by the covered matter affecting the Constituent Parcel from which the Insured is Ejected.

(c) The Insured Claimant shall have the right to have the fee estate, any Constituent Parcel, and any Electricity Facility affected by a defect insured against by this policy valued either as a whole or separately.

(d) The provisions of this Section 3 shall not diminish the Insured's rights under any other endorsement to the policy; however, the calculation of loss or damage pursuant to this endorsement shall not allow duplication of recovery for loss or damage calculated pursuant to Section 8 of the Conditions or any other endorsement to the policy.

4. Valuation of Severable Improvements:

(a) In the event of an Ejection, the calculation of the loss shall include (but not to the extent that these items of loss are included in the valuation of the Title determined pursuant to Section 8 of the Conditions or any other provision of this or any other endorsement) the diminution in value of the Insured's interest in any Severable Improvement resulting from the Ejection, reduced by the salvage value of the Severable Improvement.

(b) The policy does not insure against loss or damage (and the Company will not pay any costs, attorneys' fees, or expenses) relating to: (i) the attachment, perfection, or priority of any security interest in any Severable Improvement; (ii) the vesting or ownership of title to or rights in any Severable Improvement; (iii) any defect in or lien or encumbrance on the title to any Severable Improvement; or (iv) the determination of whether any specific property is real or personal in nature.

5. 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 the policy and thereafter is Ejected, the following items of loss, if applicable to that portion of the Land from which the Insured is Ejected, 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 3 of this endorsement, the valuation of Severable Improvements pursuant to Section 4 of this endorsement, or Section 8(a)(iii) of the Conditions:

(a) The reasonable cost of: (i) disassembling, removing, relocating and reassembling any Severable Improvement that the Insured has the right to remove and relocate, situated on the Land at the

time of Ejection, to the extent necessary to restore and make functional the integrated project; (ii) transportation of that Severable Improvement for the initial one hundred miles incurred in connection with the restoration or relocation; and (iii) restoring the Land to the extent damaged as a result of the disassembly, removal and relocation of the Severable Improvement and required of the Insured solely because of the Ejection.

(b) Payments or damages for use and occupancy of the Land prior to the Ejection that the Insured may be obligated to pay to any person having paramount title to that of the Insured.

(c) The fair market value, at the time of the Ejection, of the estate or interest of the Insured in any lease or easement, as applicable, made by the Vestee as lessor or grantor of all or part of the Title.

(d) Damages caused by the Ejection that the Insured is obligated to pay to lessees or easement grantees on account of the breach of any lease or easement, as applicable, made by the Vestee as lessor or grantor of all or part of the Title.

(e) The reasonable cost to obtain land use, zoning, building and occupancy permits, architectural and engineering services, and environmental testing and reviews for a fee estate in a replacement parcel of land reasonably equivalent to the parcel that is the subject of the Ejection.

(f) If any Electricity Facility is not substantially completed at the time of Ejection, the actual cost incurred by the Insured up to the time of Ejection, less the salvage value, for the Electricity Facility located on that portion of the Land from which the Insured is Ejected. Those costs include costs incurred to construct and fabricate the Electricity Facility, obtain land use, zoning, building and occupancy permits, architectural and engineering services, construction management services, environmental testing and reviews, and landscaping, and cancellation fees related to the foregoing.

6. 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]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

NM FORM 89: MEZZANINE FINANCING ENDORSEMENT

This endorsement is issued as part of
Policy Number _____
Issued by
BLANK TITLE INSURANCE COMPANY

1. The Mezzanine Lender is: _____ and each successor in ownership of its loan ("Mezzanine Loan") reserving, however, all rights and defenses as to any successor that the Company would have had against the Mezzanine Lender, 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.
2. The Insured
 - a. assigns to the Mezzanine Lender the right to receive any amounts otherwise payable to the Insured under this policy, not to exceed the outstanding indebtedness under the Mezzanine Lender; and
 - b. agrees that no amendment of or endorsement to this policy can be made without the written consent of the Mezzanine Lender.
3. The Company does not waive any defenses that it may have against the Insured, except as expressly stated in this endorsement.
4. In the event of a loss under the policy, the Company agrees that it will not assert the provisions of Exclusions from Coverage 3(a), (b) or (e) to refuse payment to the Mezzanine Lender solely by reason of the action or inaction or Knowledge, as of Date of Policy, of the Insured, provided
 - a. the Mezzanine Lender had no Knowledge of the defect, lien, encumbrance or other matter creating or causing loss on Date of Policy.
 - b. this limitation on the application of Exclusions from Coverage 3(a), (b) and (e) shall
 - i. apply whether or not the Mezzanine Lender has acquired an interest (direct or indirect) in the Insured either on or after Date of Policy, and
 - ii. benefit the Mezzanine Lender only without benefiting any other individual or entity that holds an interest (direct or indirect) in the Insured or the Land.
5. In the event of a loss under the Policy, the Company also agrees that it will not deny liability to the Mezzanine Lender on the ground that any or all of the ownership interests (direct or indirect) in the Insured have been transferred to or acquired by the Mezzanine Lender, either on or after the Date of Policy.

6. The Mezzanine Lender acknowledges

a. 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 Title, and the amount so paid shall be deemed a payment under this policy; and

b. that the Company shall have the right to insure mortgages or other conveyances of an interest in the Land, without the consent of the Mezzanine Lender.

7. If the Insured, the Mezzanine Lender or others have conflicting claims to all or part of the loss payable under the Policy, the Company may interplead the amount of the loss into Court. The Insured and the Mezzanine Lender shall be jointly and severally liable for the Company's reasonable cost for the interpleader and subsequent proceedings, including attorneys' fees. The Company shall be entitled to payment of the sums for which the Insured and Mezzanine Lender are liable under the preceding sentence from the funds deposited into Court, and it may apply to the Court for their payment.

8. Whenever the Company has settled a claim and paid the Mezzanine Lender pursuant to this endorsement, the Company shall be subrogated and entitled to all rights and remedies that the Mezzanine Lender may have against any person or property arising from the Mezzanine Loan. However, the Company agrees with the Mezzanine Lender that it shall only exercise these rights, or any right of the Company to indemnification, against the Insured, the Mezzanine Loan borrower, or any guarantors of the Mezzanine Loan after the Mezzanine Lender has recovered its principal, interest, and costs of collection.

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.

AGREED AND CONSENTED TO:

(Insert name of Insured)

(Insert name of Mezzanine Lender)

By: _____ By: _____

NM FORM 90: RESIDENTIAL LIMITED COVERAGE MORTGAGE MODIFICATION POLICY
issued by
BLANK TITLE INSURANCE COMPANY

This policy, when issued by the Company with a Policy Number and the Date of Policy, is valid even if this policy or any endorsement to this policy is issued electronically or lacks any signature.

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 Condition 16.

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE AND THE CONDITIONS, and provided that the Land is improved with an existing one-to-four family residence or residential condominium unit, [Blank Title Insurance Company], a [Blank] corporation (the "Company"), insures as of the Date of Policy against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured solely by reason of the Modification resulting in either:

1. The invalidity or unenforceability of the lien of the Identified Mortgage upon the Title at the Date of Policy.
2. The loss of priority of the lien of the Identified Mortgage, at the Date of Policy, over any lien or encumbrance on the Title that has been created, attached, filed or recorded in the Public Records subsequent to the date the Identified Mortgage was recorded in the Public Records.

DEFENSE OF COVERED CLAIMS

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]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

NM FORM 91: CONTRACT PURCHASER CONVERSION ENDORSEMENT

**This endorsement is issued as part of
Policy Number _____
Issued by
BLANK TITLE INSURANCE COMPANY**

Attached to and made a part of NM 1 Owner's Policy No.: ____ ("Policy"):

1. Schedule A of the Policy is hereby amended as follows:
 - A. Date of Policy: _____
 - B. Amount of Insurance: \$_____
 - C. The estate or interest in the land which is covered by this Policy is Fee Simple and title to said estate or interest is vested in the Insured.
2. Schedule B of the policy is hereby amended by adding or deleting the following additional special exceptions as follows:
 - A. [Add or delete exceptions here, or if none, add the word "NONE"]
 - B. _____
3. The Policy as modified by this Conversion Endorsement consists of the NM form 1 Owner's Policy jacket including the Covered Risks, Exclusions from Coverage and Conditions, this Owner's Contract Purchaser's Conversion Endorsement, Schedules A and B of the Policy as modified by this Conversion Endorsement, and the following Endorsement(s): [List additional owner's endorsements here, or if none, add the word "NONE"]

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]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

End of Adopted Rules

2024 New Mexico Register

Submittal Deadlines and Publication Dates

Volume XXXV, Issues 1-24

Issue	Submittal Deadline	Publication Date
Issue 1	January 4	January 16
Issue 2	January 18	January 30
Issue 3	February 1	February 13
Issue 4	February 15	February 27
Issue 5	February 29	March 12
Issue 6	March 14	March 26
Issue 7	March 28	April 9
Issue 8	April 11	April 23
Issue 9	April 25	May 7
Issue 10	May 9	May 21
Issue 11	May 23	June 11
Issue 12	June 13	June 25
Issue 13	July 8	July 16
Issue 14	July 18	July 30
Issue 15	August 1	August 13
Issue 16	August 15	August 27
Issue 17	August 29	September 10
Issue 18	September 12	September 24
Issue 19	September 26	October 8
Issue 20	October 10	October 22
Issue 21	October 24	November 5
Issue 22	November 7	November 19
Issue 23	November 26	December 10
Issue 24	December 12	December 23

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rulemaking, proposed rules, adopted rules, emergency rules, and other similar material. 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.srca.nm.gov/new-mexico-register/>. For further information, call 505-476-7941