

TITLE 13 INSURANCE
CHAPTER 14 TITLE INSURANCE
PART 1 DEFINITIONS AND GENERAL PROVISIONS

13.14.1.1 ISSUING AGENCY: Office of Superintendent of Insurance (“OSI”).
[13.14.1.1 NMAC – Rp, 13.14.1.1 NMAC, 1/1/2021]

13.14.1.2 SCOPE: This rule applies to all title insurers, title insurance agencies, and title insurance agents conducting the business of title insurance in New Mexico.
[13.14.1.2 NMAC – Rp, 13.14.1.2 NMAC, 1/1/2021]

13.14.1.3 STATUTORY AUTHORITY: Sections 59A-2-8, 59A-2-9, 59A-30-4, 59A-30-6, 59A-30-6.1, 59A-30-6.2 and 59A-30-8 NMSA 1978.
[13.14.1.3 NMAC – Rp, 13.14.1.3 NMAC, 1/1/2021]

13.14.1.4 DURATION: Permanent.
[13.14.1.4 NMAC – Rp, 13.14.1.4 NMAC, 1/1/2021]

13.14.1.5 EFFECTIVE DATE: January 1, 2021, unless a later date is cited at the end of a section.
[13.14.1.5 NMAC – Rp, 13.14.1.5 NMAC, 1/1/2021]

13.14.1.6 OBJECTIVE: The purpose of this rule is to define terms applicable throughout Title 13, Chapter 14 of the New Mexico Administrative Code.
[13.14.1.6 NMAC – Rp, 13.14.1.6 NMAC, 1/1/2021]

13.14.1.7 DEFINITIONS: For definitions of terms contained in this rule, refer to Section 59A-30-3 NMSA 1978, unless otherwise noted below.

- A. “Abstract plant”** means title plant.
- B. “Agency”** means a business entity as defined in Subsection B of Section 59A-12-2 NMSA 1978, including a sole proprietorship that transacts title insurance business.
- C. “ALTA”** means the American Land Title Association.
- D. “Basic premium rate”** means the premiums set from time to time by the superintendent for an original owner’s policy.
- E. “Commitment”** means an NM form 6 issued to a customer.
- F. “Day or Days”** means, unless otherwise specified:
 - (1)** one to five days excludes weekends and state holidays; and
 - (2)** six days or more, includes weekends and holidays.
- G. “Down date”** means the date that a subsequent search and examination of the public records affecting title to property is completed and effective.
- H. “Escrow”** means a transaction in which funds are delivered or given to a person not otherwise having any right, title, or interest in them, to be held by that person for delivery or disbursement to another person upon the happening of a specified event or the performance of a specified condition.
- I. “Escrow account”** means an account established pursuant to Sections 58-28-4 or 59A-12-22 NMSA 1978.
- J. “Escrow funds”** means all monies the issuing title insurance agency or title insurer receives when conducting escrows, settlements, closings or tax deferred exchanges in connection with the issuance of a title insurance policy.
- K. “Escrow instructions”** means a dated, written, and signed agreement of the parties to an escrow, including a duly appointed agent or attorney-in-fact, specifying the event or condition upon which the escrowed funds shall be delivered or disbursed. This term shall include a purchase agreement, or lender’s instructions, and modifications of escrow instructions.

L. “Escrow officer” means an individual affiliated with a title insurance agency or title insurer who is directly responsible for the settlement of a real estate transaction, as evidenced by their signature on a settlement statement.

M. “Extra chain of title” means a parcel having a separate chain of title from the original chain being searched.

N. “Funds subject to immediate withdrawal” as used in Subsection F of Section 59A-30-3 means money collected and deposited in an escrow account with a financial institution held in the name of and subject to the control of a title insurance agency, a title insurer, or third party fiduciary for a real estate closing, that can be totally disbursed immediately by cash withdrawal or cashier’s checks without relying on the balance created by other deposit in the account not made as part of the real estate closing for which disbursement is being made.

(1) The following funds are subject to immediate withdrawal collected on the day of deposit:

(a) cash;

(b) received wired funds managed by the federal reserve system;

(c) a cashier’s check or certified check which is issued payable to the title insurance agency, title insurer, or third party fiduciary and has been deposited to its account at the financial institution which issued it; and guaranteed by the financial institution as collected funds for immediate disbursement;

(d) a cashier’s check which is payable to and was purchased by the title insurance agency, title insurer, or third party fiduciary, and has been deposited to its account at a financial institution and guaranteed by the financial institution for immediate disbursement.

(2) The following funds are considered available funds on the next business day after day of deposit:

(a) treasury checks, postal money orders, federal reserve bank checks and federal home loan bank checks;

(b) state of New Mexico and local government checks which have been deposited at a financial institution located in New Mexico using a special deposit slip if required by the depository institution for next day availability;

(c) cashier’s checks, certified check and teller’s checks which have been deposited at a financial institution located in New Mexico using a special deposit slip if required by the depository institution for next day availability.

(d) All other modes used for the transfer of monies will be available funds on the earliest date they are considered collected funds in accordance with Regulation CC, “Availability of Funds and Collection of Checks” established by the board of governors of the federal reserve system as amended.

(e) Any funds received under the automated clearing house (ACH) network shall not be considered “available funds” until collected.

O. “HECM” means a home equity conversion mortgage administered by the federal housing administration (FHA).

P. “HUD” means the United States department of housing and urban development.

Q. “Loan policy” means an NM form 2 issued to a customer.

R. “Mortgage” means either a mortgage or deed of trust.

S. “One to four family residential property” means any real property primarily designed and used for residential occupancy of from one to four families, including a residential unit in a condominium if such unit is designed and used primarily for occupancy by one to four families, regardless of the total number of units in the condominium complex.

T. “Owner’s policy” means an NM form 1 or NM form 34, as applicable, issued to a customer.

U. “Pro forma policy” means a sample of an owner’s or loan policy prepared prior to issuance of the policy, with completed schedules A and B and endorsements, identifying the proposed insured, the exceptions that are proposed to be placed in the final policy to be issued, and the name of the title insurer and title insurance agency, including samples of endorsements.

V. “Referrer” means any person in a position to refer business to a title insurer or title insurance agency.

W. “Simultaneous Issue” means issuing two or more policies bearing the same effective date and insuring part or all of the same land.

X. “Title plant” means a collection of real estate records meeting the requirements of Section 59A-12-13 NMSA 1978.

Y. “Title rate case” means a proceeding that results in the establishment of rates, or charges pertaining to the business of title insurance and includes, without limitation, the title rate case required by Section 59A-30-8 NMSA 1978.

Z. “Unusual complexity” means when circumstances cause an unusually long search or complicated examination as determined by a reasonable title insurance agent or title insurer.

AA. “Vestee” means the person or persons in whom title to the land is vested.
[13.14.1.7 NMAC – Rp, Sections 7 through 33 of 13.14.1 NMAC, 1/1/2021; A, 1/1/2024]

13.14.1.8 GENERAL PROVISIONS:

A. Every title insurer shall establish written instructions and underwriting standards consistent with these rules, including, without limitation, underwriter approval requirements and underwriting approval record retention requirements. Unless otherwise specifically required or limited by these rules, a title insurer in its discretion may determine what risks the insurer is willing to insure.

B. Unless otherwise specified, whenever these rules allow modification or deletion of provisions of a form of policy or endorsement or permit the modification of language required by these rules to be included in policies (including pro forma policies), commitments or endorsements, that change may be made by:

- (1) striking through the language of the form;
- (2) deleting the language of the form; or
- (3) attaching an endorsement to the policy that makes the change.

C. The premiums and charges authorized by these rules shall be established by order of the superintendent in a title rate case conducted pursuant to Subsection A of Section 59A-30-8 NMSA 1978, or as amended or supplemented by order issued after a hearing conducted pursuant to Subsection B of Section 59A-30-8 NMSA 1978. All references to premiums and charges shall mean the premiums and charges established by the superintendent’s order in the most recent title rate case and in effect at the time the premium or charge is incurred.

D. When a statute or rule requires a title insurer or title insurance agency to deliver a document, or otherwise provide notice, to a person, delivery or notice to an authorized agent of that person satisfies that requirement.

E. Except as expressly authorized in these rules, it shall not be permissible to insure around any adverse matter or document by intentionally omitting it from any commitment or policy.

[13.14.1.8 NMAC – N, 1/1/2021]

13.14.1.9 RULE NONCOMPLIANCE: Failure to comply with any provision of these rules is punishable under the applicable provisions of the Insurance Code.

[13.14.1.9 NMAC – N, 1/1/2021]

HISTORY OF 13.14.1 NMAC:

Pre-NMAC History.

ID 74-1, Article 10, Chapter 58, Rule 2, Regulations for Filing Title Insurance Forms and Rates, filed 3/7/1974.

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. 13.14.1 NMAC, General Provisions, (filed 5/15/2000), was repealed and replaced by 13.14.1 NMAC, Definitions and General Provisions effective 1/1/2021.

Other History.

Re-promulgated a portion of SCC-86-1, Insurance Department Regulation 30 - Title Insurance (filed 5/9/1986) and renumbered, reformatted and replaced as 13 NMAC 14.1, General Provisions, effective 11/01/1996.

13 NMAC 14.1, General Provisions (filed 10/2/1996) was renumbered, reformatted, amended and replaced by as 13.14.1 NMAC, General Provisions, effective 5/15/2000.

13.14.1 NMAC, General Provisions (filed 4/28/2000), amended effective 7/31/2014.

13.14.1 NMAC, General Provisions (filed 7/31/2014), amended effective 3/1/2016.

13.14.1 NMAC, General Provisions, (filed 5/15/2000), was repealed and replaced by 13.14.1 NMAC, Definitions and General Provisions effective 1/1/2021.