

TITLE 13 INSURANCE
CHAPTER 14 TITLE INSURANCE
PART 5 COMMITMENTS

13.14.5.1 ISSUING AGENCY: Office of Superintendent of Insurance (“OSI”).
[13.14.5.1 NMAC – Rp, 13.14.5.1 NMAC, 1/1/2021]

13.14.5.2 SCOPE: This rule applies to all title insurers, title insurance agencies, and title insurance agents conducting title insurance business in New Mexico.
[13.14.5.2 NMAC – Rp, 13.14.5.2 NMAC, 1/1/2021]

13.14.5.3 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.
[13.14.5.3 NMAC – Rp, 13.14.5.3 NMAC, 1/1/2021]

13.14.5.4 DURATION: Permanent.
[13.14.5.4 NMAC – Rp, 13.14.5.4 NMAC, 1/1/2021]

13.14.5.5 EFFECTIVE DATE: January 1, 2021, unless a later date is cited at the end of a section.
[13.14.5.5 NMAC – Rp, 13.14.5.5 NMAC, 1/1/2021]

13.14.5.6 OBJECTIVE: The purpose of this rule is to establish requirements for commitments issued for title insurance.
[13.14.5.6 NMAC – Rp, 13.14.5.6 NMAC, 1/1/2021]

13.14.5.7 DEFINITIONS: See 13.14.1 NMAC.
[13.14.5.7 NMAC – Rp, 13.14.5.7 NMAC, 1/1/2021]

13.14.8 ISSUANCE OF A COMMITMENT:

A. Upon acceptance of an order for any type of title insurance, a title insurer or title insurance agency shall deliver to the proposed insured, a commitment showing the exceptions which will appear in the proposed policy as of the date of the commitment and requirements to insure the title in accordance with the order. Such commitment shall be delivered as soon as practical, using the title insurer’s or title insurance agency’s best efforts, allowing reasonably sufficient time to review prior to the completion of the transaction.

B. When a commitment is for a one to four family residential property, it shall be delivered with NM form 35, as the cover page. The NM form 35, when required, shall be signed by purchaser(s) at or before the time of settlement and retained in the agency’s file. The NM form 35 is not required if, prior to the delivery of the commitment, the proposed insured(s) signs a contract for sale of the insured land that includes substantially identical language to that included in NM form 35 and that is completed by checking all appropriate blanks.

C. When requested by a proposed insured lender the following language may be added to a title commitment “note for information only: according to the public records, there have been no deeds conveying the property in this commitment within a period of (six to 24) months prior to the date of this commitment, except as follows:” The inclusion of such language in the commitment does not increase or otherwise modify coverage under the commitment or policy.

D. When a to-be-determined title commitment is issued, the following language shall be included: “This title commitment is not effective until schedule A is completed and the company reserves the right to amend and supplement this commitment with additional information, requirements and exceptions based upon the provision of additional information.”
[13.14.5.8 NMAC – N, 1/1/2021]

13.14.5.9 DURATION OF COMMITMENT: A commitment shall be valid for a period of six months. A commitment may be extended or renewed by endorsement for up to three additional six month periods when the pending order for title insurance remains active and the required additional premiums are paid. Whenever an insured

under a loan policy on property taken by foreclosure or deed in lieu of foreclosure, or by a state or federal agency, requests a commitment, the commitment may be initially endorsed to be valid for no more than two years upon payment of the required premiums for both issuance and extensions.
[13.14.5.9 NMAC – Rp, 13.14.5.11 NMAC, 1/1/2021]

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]

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

[13.14.5.11 NMAC – N 1/1/2021]

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:

(1) Standard exception 3 may be deleted 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, 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]

13.14.5.13 PRO FORMA POLICIES: A pro forma policy may be issued only if the land is not one to four family residential property. In such case, schedule A shall conspicuously state: "This is a pro forma policy furnished to or on behalf of the party proposed to be insured for discussion only. It does not reflect the present status of title and is not a commitment to insure the estate or interest as shown herein, nor does it evidence the willingness

of the company to provide any coverage shown herein. Any such commitment must be an express written undertaking issued on the appropriate forms of the company.”
[13.14.5.13 NMAC – Rp, 13.14.5.13 NMAC, 1/1/2021]

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.

Other History:

Re-promulgated a portion of SCC-86-1, Insurance Department Regulation 30 - Title Insurance and renumbered, reformatted and replaced as 13 NMAC 14.5, Commitments or Binders, effective 11/1/1996.

13 NMAC 14.5, Commitments or Binders, (filed 10/2/1996) was renumbered, reformatted, amended and replaced as 13.14.5 NMAC, Commitments or Binders, effective 5/15/2000, amended effective 7/31/2014.

13.14.5 NMAC, Commitments or Binders, effective 7/31/2014, amended effective 3/1/2016.

13.14.5 NMAC, Commitments or Binders, effective 3/1/2016, amended effective 7/1/2018.

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.