



OLD REPUBLIC
National Title Insurance Company

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Bulletin

To: All Agents, Direct Operations & Attorneys in the State of Texas
From: David W. Rhodes, Sr. Underwriting Counsel
Date: August 27, 2007
Re: Trusts and Trustees—HB564

The State Bar of Texas made several recommendations to the Legislature addressing Trust issues which were codified into law by HB 564. The changes were wide ranging and addressed accounting and disclosure problems with additional duties imposed on a Trustee. Many of these changes do not affect the closing and the insurance aspects and will not be covered. Some of the changes will impact the examination and closing aspects of a real estate transaction.

It is customary for a title company to require a copy of the Trust Agreement for review and further requirements. Section 114.081 has been expanded to protect anyone dealing with a Trustee so long as they deal with the Trustee in good faith and obtain a certification of Trust or a copy of the Trust Agreement. New section 114.086 of the Property Code sets out the information to be included in the Certification of Trust as follows:

1. a statement the Trust exists and the date the agreement was executed;
2. the identity of the Seller;
3. the identity and current address of the Trustee;
4. the powers of the Trustee;
5. whether the Trust is revocable or irrevocable and the name of any person who can revoke the Trust;
6. the authority of co-Trustees and whether all or some are required to bind the Trust;
7. the manner in which title to the Trust property should be taken and that the Trust has not been revoked, modified, or amended.

The Certificate of Trust may contain other information other than set out above. Any recipient of a Certification of Trust may require copies of excerpts from the original Trust Agreement that designate the Trustee and confer on the Trustee the authority to bind the Trust in the current transaction. The Bill also says that a person making a demand for the Trust Agreement in addition to the Certification of Trust may be liable for damages if the Court determines that the person did not act in good faith in making the demand.

Underwriting Guidelines

- You may encounter more resistance in providing a copy of the Trust Agreement for review because of these changes. If the entire Trust Agreement is not provided, you should require a Certification of Trust in recordable form; not just excerpts of the pertinent parts of the Trust Agreement.

Section 112.059 has been added to the Property Code which allows a Trustee to terminate a Trust having a value of less than \$50,000. Notice must be given to the Beneficiaries or possible distributes before the Trust can be terminated.

This new requirement takes effect September 1, 2007.

Any questions concerning this Bulletin should be directed to the Legal Department.

Underwriting Counsel

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Steve Streiff

Administration

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