



UNDERWRITING BULLETIN - TEXAS

No. 18

DATE: March 22, 2012

RE: Short Sale Affidavits

As short sales become more common, lenders are drafting short sale affidavits and requesting they be signed by all parties, including the title agent. These affidavits require the title agent to confirm or warrant certain off record facts which are simply outside your knowledge.

The Commissioner of Insurance was recently presented with a proposal to amend Procedural Rule P-35 so as to address short sale affidavits. The Commissioner disapproved the proposal, and wrote the following:

Commissioner's Order 12-0217
March 19, 2012
2012 Texas Title Insurance Periodic Hearing
Docket No. 2732

(9) Item 2012-91, to consider amending Procedural Rule P-35, Prohibition Against Guaranties, Affirmations, Indemnifications, and Certifications, to expressly allow or disallow affidavits from settlement agents in short sales beyond the coverage in our promulgated forms, is disapproved. Requiring title agents to execute short sale affidavits violates P-35, as written. Short sale affidavits seek assurances beyond the expected scope of title agents' knowledge.

We suggest you furnish the Commissioner's language to any lender who asks you to sign a short sale affidavit.

~

Bruce L. Goldston
Vice President
Regional Counsel