

**TDI DOCKET NO. 2851**

**CONSIDERATION OF § BEFORE THE**  
**§**  
**A REQUEST TO CHANGE THE TITLE § COMMISSIONER OF INSURANCE**  
**§**  
**INSURANCE BASIC PREMIUM RATES § FOR THE STATE OF TEXAS**

**TLTA Petition: Nos. P-1124-01 & P-1124-02**  
**OPIC Petition: No. P-1124-03**

**TLTA’S MOTION TO VACATE AND MOTION FOR REHEARING AND RECONSIDERATION**

**TO THE HONORABLE CASSIE BROWN, COMMISSIONER OF INSURANCE:**

COMES NOW Texas Land Title Association (“TLTA”), Petitioner in the above referenced matter (assigned Petition Nos. P-1124-01 and P-1124-02, collectively the “Petition”), and files this, its Motion to Vacate and Motion for Rehearing and Reconsideration in the above referenced Docket as it pertains to Petition Nos. P-1124-01, P-1124-02, and P-1124-03 requesting the Commissioner to vacate Commissioner Order No. 2025-9125 dated February 6, 2025 (“the “Order”), grant a rehearing, reconsider the Commissioner’s denial of TLTA’s Petition by Commissioner Order No. 2024-9045, grant TLTA’s Petition, and publish and adopt TLTA’s proposed rule attached to its Petition, and in support would respectfully show as follows:

## I.

### **Introduction**

1. The Order must be vacated as invalid because it misapplies Texas law and fails to comply with statutory and constitutional due process requirements as set forth below:
  - TDI and the Commissioner failed to follow proper rule making procedures and conduct a rule hearing required to change title rates;
  - The Order applied an unlawful burden of proof on TLTA;
  - The Order misapplied the law by failing to consider evidence necessary to set prospective rates that are nonconfiscatory to title agents and insures;
  - The Order misapplied the law by failing to consider all relevant evidence related to income and expenses of title agents and insurers, including failing to consider 2023 income and expense data in TDI's possession;
  - The Order failed to make specific findings of fact to establish the numerical inputs to support the 10% rate decrease ordered, and
  - The Order uses of a rate table that does not align with the rate decrease ordered.
  
2. The Order requires a 10% reduction in title insurance basic premium rates to take effect July 1, 2025—the largest decrease in Texas insurance regulatory history

going back to 1938. This massive rate decrease eclipses the second largest rate decrease of 6.5% ordered in 2002.

3. This historic rate decrease is made during a time when it will hurt title agents and insurers the most. Expense ratio measures how high expenses are relative to income (expense divided by premiums). The higher the expense ratio, the higher expenses are relative to income. TLTA's actuary demonstrated that there was an increase of title agents' expense ratio from approximately 86% in 2019 (before Covid) to approximately 95% in 2023 (based on a survey of 37 title agents accounting for about 50% of title insurance premium). TLTA's evidence demonstrated that title insurance sales declined in late 2022, resulting in an approximate 40% drop in premium in 2023. Title insurance sales correlate with home sales (and refinance). TLTA's evidence further demonstrated that between mid-2022 and late 2023, the U.S. experienced its fastest-ever deterioration in the housing market, largely due to the market driven surge in home prices, rapidly rising interest rates, inflation in labor and material costs, higher property taxes, and increasing property and casualty insurance costs. Home sales declined 10.4% from 2021 to 2022, 12.3% from 2022 to 2023, and .4% from 2023 to 2024. Importantly, TDI holds in its possession agent income and expense data for 2023 that it obtained from a data call. The 2023 data in TDI's possession is direct, relevant evidence of current market conditions following the decline in the

housing market, which started in late 2022. The Order did not consider the 2023 data in TDI's possession despite its obvious relevance. Because TDI has not released its data, TLTA's actuary conducted a survey of 37 title agents representing 50% of title insurance premium to capture their experience in 2023 and provided an analysis of that data showing the title insurance market decline. These current market forces and conditions affecting title insurance along with written statements by title agents about the harm a rate decrease would have on them were submitted by TLTA to TDI but not considered or addressed by the Order.

4. The Order suffers from material procedural, substantive legal, and constitutional defects and errors, which, if not vacated, will likely cause significant economic harm to the title insurance industry, which employs approximately 20,000 Texans. TLTA's uncontroverted analysis concluded that based on 2022 data (not even accounting for the decline seen in 2023), a rate decrease of 8.6% (1.4% less than the 10% called for by the Order) will likely result in 40% of title agents becoming unprofitable (compared to approximately 25% of title agents becoming unprofitable annually as set out in TLTA's evidence). While a 10% reduction in rates will save consumers a small sum of money when they close on a house or refinance, it is expected to do significant harm to the title insurance market. A homebuyer would save approximately \$220 on the one-time title insurance

premium paid at closing on a \$350,000 home. Those small savings come at the cost of likely sending over greater numbers of title agents into a net negative financial position despite the legal requirement that rates cannot be confiscatory as to title agents and insurers. Reduced competition caused by inadequate rates in the title insurance market would ultimately hurt consumers in the long run.

5. Title insurance protects real estate owners and lenders from defects in title. Title insurance rates are adopted by reference in a TDI rule found at 28 Tex. Admin. Code Sec. 9.1. The Commissioner sets title insurance rates by applying the standard found in Texas Insurance Code Section 2703.152 requiring the Commissioner to consider **all relevant income and expenses of title insurers and agents** and requiring that the rates must be **reasonable as to the public and nonconfiscatory as to title insurers and agents**. “Nonfiscatory” means that the rates must allow for the recovery of operating expenses and also a reasonable return. *See Geeslin v. State Farm Lloyds*, 255 S.W.3d 786, 795 (Tex. App.—Austin 2008, no pet.). A rate statute cannot require proving that a rate decrease would cause insolvency in order to invalidate the rate. *See id.* Requiring a showing that a rate would cause insolvency would violate the due process and takings clauses of the Texas and U.S. Constitutions. *See id.*
6. The procedure the Commissioner must follow for setting title insurance rates is set out in Texas Insurance Code Section 2703.202. In short, the Commissioner

must hold a public hearing that is either a rule hearing or a contested case hearing, depending on what is requested by a party with standing to request a rate change. See Tex. Ins. Code Sec. 2703.202.

7. In this case, after a long period of dialogue with TDI, TLTA filed a petition for rate changes through rulemaking as more fully discussed below. The Office of Public Insurance Counsel ("OPIC") also filed a petition for a rate change through rulemaking. TLTA's Petition requested adoption of a rule reflecting no change in rates or, in the alternative, a rate decrease of no more than 1%. There were several public meetings about title rates starting in 2023. On January 23, 2025, the Commissioner held a public hearing. Prior to the public hearing, the Commissioner denied TLTA's petition for rulemaking which contained TLTA's recommended rule proposal to change rates. The Commissioner and TDI did not publish a rule proposal with a TDI recommended rate change or any other rate change rule proposal. Without publication of a rule containing all the information required in notice of a rule proposal by Texas Government Code Section 2001.024, the public hearing was not a rule hearing with proper notice to the public as required by Texas Insurance Code Section 2703.202 and Texas Government Code Chapter 2001, Subchapter B. On February 6, 2025, the Commissioner issued a final order reducing title insurance rates by 10%.

## II.

### Summary of Analysis

8. The Order must be vacated and a rehearing and reconsideration of TLTA's Petition granted because of the following (as more fully set out below):

A. **Failed to Conduct Rule Hearing and Follow Rulemaking Procedure.**

The Commissioner failed to comply with Texas Insurance Code Section 2703.202, Texas Government Code Chapter 2001, Subchapter B, especially Sections 2001.021, 2001.024, 2001.029, and 28 Texas Administrative Code Section 1.202 by failing to follow proper procedures for considering TLTA's rule petition, including, but not limited to failing to give TLTA notice and opportunity to respond to a TDI Staff rule proposal with alternative rate change and denying TLTA's rulemaking petition without proposing an alternative rule proposal from TDI Staff, and failing to propose a rule and give proper notice prior the public hearing. Such failures constitute violations of statute and the Texas and U.S. Constitutions' due process clauses, actions taken in excess of agency statutory authority, decision-making through unlawful procedure, and an Order that is arbitrary and capricious. The Order and each finding of fact ("FOF") and conclusion of law ("COL") is defective and invalid.

B. **Misapplied Law and Engaged in Invalid *Ad Hoc* Rulemaking by**

**Requiring an Unlawful Burden of Proof**. The procedure leading up to the Order failed to comply with Texas Insurance Code Chapter 2703, especially Sections 2703.152 and 2703.202, and violated the due process and the takings clauses of the Texas and U.S. Constitution through:

- a. application of a burden of proof on TLTA;
- b. applying a clear and convincing evidence standard to prove that a rate change would be confiscatory;
- c. requiring TLTA to show that such rate change would result in insolvency (which was held unconstitutional in the *Geeslin* case); and
- d. requiring that TLTA apply its confiscatory analysis to the "average" title agent and insurer based on a holding in an inapplicable North Carolina case cited by OPIC's actuary.

None of the above are required by Texas Insurance Code Chapter 2703 governing title insurance rates. Such requirements misapply the law, violate statutes and the Texas and U.S. Constitutions, and constitute invalid *ad hoc* rulemaking. Such actions also exceed the Commissioner's legal authority, apply an unlawful procedure, are not supported by substantial evidence, and are arbitrary and capricious. The Order as a whole and FOF 19 and 23, and COL 6 are defective and invalid.

C. **Misapplied the Law by Failing to Consider Evidence Related to Confiscatory Rate Issue**. Ratemaking must be prospective in nature, yet the Order failed to consider and address uncontroverted evidence showing that a rate decrease in current and projected economic conditions would be confiscatory. Such failure resulted in misapplication and violation of law under Texas Insurance Code Section 2703.152. Such failure also constitutes actions taken in excess of agency statutory authority, decision-making through unlawful procedure, a decision not supported by substantial evidence, and an Order that is arbitrary and capricious. The Order as a whole and FOF 19 and 24 and COL 6 are defective and invalid.

D. **Misapplied the Law by Failing to Consider Evidence Related to All Relevant Income and Expenses (e.g., 2023 data)**. The Order relied on historical data ending in 2022 but failed to consider 2023 (or later) data as well as current and future economic conditions that dramatically impact the income and expenses attributable to engaging in the business of title insurance. As such, it failed to consider and address all relevant income and expenses of title agents and insurers as required by Texas Insurance Code Section 2703.152. Such 2023 income and expense data was in TDI's possession, and TLTA's 2023 income and expense data was

uncontroverted. It was also uncontroverted that 2023 data is relevant to current market conditions and conditions expected during the title insurance rating period. Such failure constitutes a violation of Texas Insurance Code Section 2703.152 and constitutes action taken in excess of agency statutory authority, decision-making through unlawful procedure, a decision not supported by substantial evidence, and an Order that is arbitrary and capricious. The Order as a whole and FOF 10-17, especially FOF 14, 17, and 22, and COL 6 are defective and invalid.

- E. **Failed to Make Findings of Facts to Support Rate Decrease.** The Order merely recites actuarial evidence but makes no findings of fact to support the 10% rate reduction called for in COL 6. There is no selection or mention of any inputs, such as profit provision or expense ratio, used to arrive at the rate change called for in the Order. Such failure makes the 10% rate reduction in COL 6 arbitrary and capricious and the Order defective. Issuance of the arbitrary Order also constitutes action in excess of agency statutory authority and a decision made through unlawful procedure. The Order as a whole and FOF 10 through 13 and 24 and COL 6 are defective and invalid.
- F. **Defective Rate Table.** The rate table attached as Exhibit A to the Order contains a rounding error that fails to reflect the 10% rate decrease called

for in the Order. Such error renders the Order in conflict with itself, ambiguous, defective, and invalid.

### III.

#### Analysis

#### **A. There Was a Failure to Conduct a Rule Hearing and Follow Proper Rulemaking Procedures Required by Law Prior to Issuing the Final Order.**

9. The Commissioner did not follow the required process set out in Texas Insurance Code Section 2703.202, Texas Government Code Chapter 2001, Subchapter B, especially Sections 2001.021, 2001.024, 2001.029, and 28 Texas Administrative Code Section 1.202 for setting the Basic Premium Rate; therefore, the Order, which fails to recount the entire procedural history in this matter, and the 10% rate decrease would be a violation of law and a violation of TLTA's procedural due process rights under the due process clauses of the Texas and United States Constitution. It must be vacated.
10. The current rates are part of the Title Insurance Basic Manual that has been adopted by reference as a rule and codified in 28 Tex. Admin. Code Ch. 9, Subchapter A, Section 9.1. The Legislature has specifically authorized the adoption of a Title Manual by reference. *See* Tex. Ins. Code Sec. 2703.208. Unless a contested case is requested and granted, Texas Insurance Code Section

2703.202(c) requires a rulemaking hearing under Texas Government Code Chapter 2001, Subchapter B prior to final order fixing rates. Here, TLTA requested rulemaking to change title rates by filing its Petition on November 1, 2024. There was no request for a contested case. Pursuant to Texas Government Code, Chapter 2001, Subchapter B, a rulemaking hearing can only be conducted after a proposed rule is published in the Texas Register. See Tex. Gov't Code Secs. 2001.024 and 2001.029. There was no rule published prior to the public hearing. Thus, the public hearing referenced in the Order failed to comply with the basic publication requirements for rulemaking.

11. Texas Government Code Section 2001.021 allows an interested person to petition a state agency to request the adoption of a rule. Texas Insurance Code Section 2703.202(b) gives standing to TLTA to request the Commissioner to hold a public hearing to fix a new premium rate. Texas Government Code Section 2001.021 requires state agencies to prescribe the procedure for submission, consideration, and disposition of rule petitions. TDI's rule governing rule petitions is found at 28 Texas Administrative Code Section 1.202. As discussed below, on December 20, 2024 Commissioner Order 2024-9045 denied TLTA's rule petition containing TLTA's rule proposal with suggested rate change. But TDI and the Commissioner did not propose a rule with a different rate change per 28 Texas Administrative Code Section 1.202(e)(2). Because the Commissioner denied TLTA's petition but

did not order publication of a proposal by TDI staff, there was no rule publication prior the public hearing and the public hearing was not a rule hearing as required by Texas Insurance Code Section 2703.202(c). More specifically as discussed below, TDI and the Commissioner failed to comply with 28 Texas Administrative Code Section 1.202(b), (d) and (e) by failing to:

- a. Add TLTA's rule proposal to the list of rule proposals pending before TDI;
- b. Notify TLTA of the name, address, and telephone number of the staff person reviewing the proposal and designated contact person for inquiries;
- c. Provide a copy of a recommended rule proposal in Texas Register form to TLTA as petitioner with a rule proposal containing a rate change that substantially differed from the rate change in TLTA's rule proposal and provide TLTA ten business days to file a written response to the recommended proposal; and
- d. Provide the Commissioner with the original petition, TDI Staff's proposal in Texas Register form, TLTA's response (if any), and any additional written comments from the public addressing the proposal after TLTA filed a response or the time for submitting a response expired.

The Commissioner also did not Instruct the Office of the Chief Clerk to submit the Commissioner's proposed rule with a rate change different from the one

suggested by TLTA to the Texas Register for publication and issue an order stating the reason TLTA's petition was denied in part because the published version of the rule was substantially different from TLTA's recommendation per 28 Texas Administrative Code Section 1.202(e). It is also not clear whether TDI complied with 28 Texas Administrative Code Section 1.202 (b) or (c) requiring the Chief Clerk to provide a copy of TLTA's petition to appropriate TDI Staff for review and response and requiring TDI Staff to provide its analysis and recommendation on the proposal to the Commissioner in Texas Register form.

12. In 2023, TLTA had numerous meetings with TDI staff to discuss contemplated changes in the basic title insurance premium rates. This is consistent with past practices where TLTA, TDI, and others have engaged in collaborative meetings and exchanged information about possible changes to the basic title premium rates. Beginning in October and December 2023, TLTA attended stakeholder meetings with TDI staff to discuss information from statistical reports and data from 2018 through 2021. TDI staff furnished and published rate analysis information about a potential range of recommended changes using title statistical data only through calendar year 2021.

13. On December 1, 2023, TLTA furnished to TDI its analysis and report of rate ranges prepared by TLTA's actuary and economist using the 2018-2021 data which included comments addressing TDI's title rate report.
14. A public hearing was set for September 19, 2024 to consider comments on the Basic Premium Rate, which was cancelled. Shortly thereafter, TDI actuarial staff issued a report dated September 2024 entitled "2024 Title Rate Report" ("TDI Report") which is based on title insurance experience from 2003 through 2022. The TDI Report states that TDI's actuarial experience data "provides a range of rate indications from -4.9% to -15.4% with an average of -10.2%."
15. On October 22, 2024, the Commissioner called a public meeting to receive comments from stakeholders and interested parties regarding title insurance premium rates. During the public meeting, TLTA submitted to the Commissioner a copy of its 2024 Title Rate Analysis and Overview which included TLTA's rate analysis and recommendations as well as other relevant information. This report included evidence showing that a rate decrease of 8.6% or more would result in an estimated 40% of the Texas title agents operating at a loss based on 2022 statistical reports (compared to approximately 25% of title agents becoming unprofitable annually as set out in TLTA's evidence). Title agents from five different regions from the state with many years of professional experience testified that any rate decrease would cause substantial economic harm given

current and anticipated market conditions. It would also adversely impact local employment leading to further layoffs, reduced benefits, and/or lower compensation.

16. On November 1, 2024, TLTA filed a Petition to Hold the Periodic Title Insurance Rate Rulemaking Hearing and for the Adoption of a Rule with TDI in accordance with Tex. Gov't Code Sec. 2001.021, Tex. Ins. Code Sec. 2703.202, and 28 Tex. Admin. Code Secs. 1.202 and 9.1 (the "Petition"), which TDI assigned two numbers - Petition Nos. P-1124-01 and P-1124-02.
17. TLTA's Petition requested that the Commissioner hold a rulemaking proceeding to fix and promulgate a title insurance premium rate pursuant to Tex. Ins. Code Sec. 2703.202(b). The Petition requested no change to rates, and in the alternative, a change of no more than -1% if a change was to be made.
18. TLTA's Petition submitted a rule proposal with proposed amendment to 28 Texas Administrative Code Section 9.1 to effectuate an amendment to the title insurance rule that sets title premium rates. The Petition further requested the Commissioner submit the proposal to the Texas Register for publication and publish notice of public hearing to consider adoption of title insurance rates.
19. TDI did not add TLTA's proposal to the list of rules pending before TDI or notify TLTA of the TDI Staff person reviewing the proposal as required by 28 Texas

Administrative Code Section 1.202(b). Instead, TDI included TLTA's petition under a section on TDI's website for "exempt notifications."

20. TDI did not provide a copy of a rule proposal with a different rate change in Texas Register form to TLTA with ten business days to respond to as required by 28 Texas Administrative Code Section 1.202(d). Because no TDI Staff proposed rule was provided to TLTA, it is logical to assume that the TDI also failed to provide the Commissioner with a TDI Staff proposed rule indicating a rate change different from TLTA's as required by 28 Texas Administrative Code Section 1.202(d).
21. The Commissioner did not instruct the Chief Clerk under 28 Texas Administrative Code Section (e) to submit the Commissioner's proposed rule differing from TLTA's to the Texas Register for publication, and the Commissioner did not issue an order stating the reason TLTA's Petition was denied in part because the published version of the rule was substantially different from TLTA's. Instead, on December 20, 2024, the Commissioner entered Order No. 2024-9045 denying TLTA's Petition for rulemaking under Government Code Section 2001.021.
22. Order No. 2024-9045 provides that the Petition for rulemaking was denied because it was "unfeasible" for TDI to meet the 60-day requirement to "hold a hearing" under Government Code Section 2001.021 while meeting the 60-day notice requirement under Texas Insurance Code Section 2703.207 with the Public

Hearing set (at that time) for January 21, 2025. However, Texas Government Code Section 2001.021 only requires denial of a petition of rulemaking or to “initiate a rulemaking proceeding...” within 60 days of filing a petition. *See also*, 28 Tex. Admin. Code Sec. 1.202(e)(the Commissioner may act on a rule petition without a hearing). Initiating rulemaking is exactly what the Commissioner is required to do in order to comply with Texas Insurance Code Section 2703.202, and a rule proposal was necessary to conduct a rule hearing.<sup>1</sup>

23. Following denial of TLTA’s rule proposal, the Commissioner never published a proposed rule from TDI Staff or any other title insurance rate change rule proposal prior to the public hearing which was set to take place on January 21, 2025 and was later postponed to January 23, 2025 due to a forecasted winter storm for Austin (the “Public Hearing”). Copies of the notice of the Public Hearing are attached as Exhibit A, which is the notice published on TDI’s website, and Exhibit B, which is the notice published in the Texas Register (49 TexReg 9608).
24. As there was no rule proposal before the Commissioner for consideration or to be commented on by the public at the Public Hearing, the Public Hearing was not a rule hearing as required by Texas Insurance Code Section 2703.202. *See also*, Tex. Gov’t Code Sec. 2001.029. As a matter of law, TDI’s notice of the Public

---

<sup>1</sup> Additionally, TDI controlled the process, including when to set the hearing. TDI cannot create scheduling conflicts to avoid carrying out its duty to properly apply the law. *See* Tex. Gov’t Code Sec. 311.021 (requiring that the entirety of statutes are intended to be effective; that a just and reasonable result of a statute is intended; and a result feasible of execution is intended with each statute enacted by the Legislature).

Hearing fails to comply with the notices required under Texas Government Code Chapter 2001, Subchapter B, which is specifically required in Texas Insurance Code Section 2703.202(c). Texas Government Code Section 2001.024 contains specific requirements for the contents of notices for rulemaking. Texas Government Code Section 2001.024 requires the notice to contain

- a brief explanation of the proposed rule,
- the text of the proposed rule,
- statement of authority,
- a fiscal note,
- an economic impact statement,
- local employment impact statement, and
- a request for comments.

The Public Hearing notice failed to contain any of these mandatory contents except an invitation to comment. See Exhibits A and B. However, the opportunity to comment was unreasonable, given there was no specific proposed rule to comment on. See Tex. Gov't Code Sec. 2001.029.

25. The failure to provide a proper rulemaking notice with a rule proposal and other important elements (e.g. "probable economic cost to persons required to comply with the rule") deprived TLTA, stakeholders, and members of the public proper notice as required by law. This omission also failed to comply with the basic

constitutional due process requirement of a meaningful hearing to address the specific proposed rate change. See Tex. Gov't Code Sec. 2001.035 (requiring substantial compliance with the notice requirements); *El Paso Hosp. Dist. v. Tex. HHS Comm'n*, 247 S.W.3d 709, 715 (Tex. 2008) ("When an agency promulgates a rule without complying with the proper rule-making procedures, the rule is invalid" as that process assures notice and opportunity to be heard). The Public Hearing on January 23, 2025 was nothing more than that—a public hearing—it was not a rulemaking hearing and cannot support a final order under Texas Insurance Code Section 2703.202. The failure to follow the plain language requirement of Texas Insurance Code Section 2703.202 requiring a rule hearing results in the Order being arbitrary and capricious. See e.g., *Pub. Util. Comm'n of Tex. v. Gulf States Utilities Co.*, 809 S.W.2d 201, 207 (Tex. 1991) (an agency's failure to follow the plain language of its regulations results in the agency acting arbitrarily).

26. Texas Insurance Code Section 2703.202(g) requires the Commissioner to render a decision and issue a final order not later than the 120<sup>th</sup> day after the date the Commissioner receives a written request under Texas Insurance Code Section 2703.202(b), and Section 2703.207 requires at least 60 days' notice of the rule hearing. In this case, the Commissioner issued the final order without conducting

a rule hearing as required by law, and the time to comply with the statutory mandates has passed. The Order must be vacated.

27. If there is an attempt to assert that the Public Hearing and the process followed in this case was somehow a valid "rulemaking" proceeding, there are other deficiencies. Specifically, Tex. Govt. Code Sec. 2001.033 requires that any state agency order finally adopting a rule must include:

(1) a reasoned justification for the rule as adopted consisting solely of:

(A) a ***summary of comments received from parties interested in the rule that shows the names of interested groups or associations offering comment on the rule and whether they were for or against its adoption;***

(B) a summary of the factual basis for the rule as adopted which demonstrates a rational connection between the factual basis for the rule and the rule as adopted; and

(C) the ***reasons why the agency disagrees with party submissions and proposals;***

(2) a concise restatement of the particular statutory provisions under which the rule is adopted and of how the agency interprets the provisions as authorizing or requiring the rule; and

(3) a certification that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

(b) Nothing in this section shall be construed to require additional analysis of alternatives not adopted by an agency beyond that required by Subdivision (1)(C) or to require the reasoned justification to be stated separately from the statements required in Subdivision (1). (Emphasis added).

28. It should be obvious that the Order itself fails to contain any discussion of the names of title agents and members of TLTA that submitted written comments that go to the very heart of the issue of how any rate decrease would cause substantial economic harm to their businesses and have a negative financial impact on their employees. The Order fails to contain any summary of their comments and fails to contain any reasons why TDI or the Commissioner disagrees with information submitted by TLTA including statements from these individual title agents included in Supplemental information filed by TLTA and provided to the Commissioner at the Public Hearing.

These comments, which were not addressed, summarized, or responded to in the Order, were submitted by:

1. **First Community Title**, letter dated October 22, 2024, signed by Claire Hartman, Owner and Partner of First Community Title and President of TLTA.

Her company has been in business in Texas for 138 years. Among other things, she emphasized the importance of considering more recent data including 2023 and 2024 which were much worse years. She emphasized that the consensus was that the profits in 2020 and 2021 would sustain agents through 2023 and 2024. Unfortunately, the profits did not. The overall market is not likely to improve in 2025. Based on her experience and discussions with independent title agents from around the state as TLTA President, she wrote "any cut at this time could be disastrous" and it would "cost hard working talented trained people their jobs" at her company and result in the closure of "an office or 2 that have been open for over 22 years."

2. **Title Partners**, letter dated September 30, 2024, signed by Laurie Leenhoots, President. Based on her 31 years of title insurance experience, she wrote, "I can confidently say that the proposed rate reduction [by TDI Staff] would have a significant impact on the sustainability of small businesses like ours." She presented several specific examples of how a rate decrease would harm her business including a discussion of increasing fixed expenses, like rent and utilities, and the ability to pay these, cuts to staff that were already made and more that would come, and how falling revenue and rising expenses have severely impacted profitability already. She stated that "[a] rate decrease,

even a small one, would ... reduce services that are critical to protecting consumers.”

3. **Central Title**, letter dated October 22, 2024, signed by Laura Hillis, EVP and General Counsel. Her company has been in business for over 93 years. She describes how the pandemic era was a “boom” and now the market is in a “drought.” While 2022 was a good year, she describes 2023 as “one of the ugliest in our company’s history and any profits earned were lost and the some and have yet to balance out.” She speaks to file counts falling by 25% and expenses increasing, particularly insurance coverages for wire fraud climbing by more than 30%. Staff cuts have already been made. She writes that a rate decrease “will throttle our ability to remain competitive.”
4. **Valley Land Title Co.**, letter dated October 8, 2024, signed by Paul Rodriguez CEO and Susan Espinosa, Director of Administration. Valley Land has been operating in South Texas for over 100 years. The title agent’s income declined by 50% from 2021 to 2022 while expenses rose by almost 9.5%. Valley Land operated at a deficit in 2023 and “expected 2024 to result in operating losses in the low to moderate six figure range.” Employee compensation and benefits have been reduced. In Valley Land’s words, a reduction in rates of any kind would “only exacerbate these conditions and minimize any hopes of reaching a reasonable level of profitability.”

5. **Big Country Title Company**, letter dated October 15, 2024, signed by Nathan Lowry, President & CEO of a family owned title agent in West Texas that has been operating since 2012. He wrote about a significant decrease in transaction volume since 2022 and increased costs, including fixed expenses like rent and commercial insurance coverages, as well as variable costs like salaries and benefits that are needed to attract and keep talent. His letter describes his first experience with having to layoff staff at current rates and his concerns about the consequences of any rate decrease, including the impact on service levels, employees, and the ability to invest in technology and compliance practices that “are critical for our industry’s integrity and customer trust.”
6. **Town Square Title**, letter dated October 10, 2024, signed by Randy Pearson, a land title veteran with 45-years of experience. He urged the Commissioner to “consider the current reality of title agents across Texas before reaching [her] decision” and emphasized if the goal is to protect consumers of title insurance policies and provide adequate and reasonable returns for title insurance companies and agents “now is not the time to decrease title insurance premium rates in Texas.” His letter includes a bar graph illustrating the steep decline in open orders since 2022, provides specific examples of increased expenses, even basic office supplies like paper and ink, and the

challenges that will be faced in 2025 with new expenses like FINCEN reporting and an exceedingly soft Texas real estate market that will take time to recover.

29. Additionally, Roland Love, Chair of TLTA's Regulatory Committee, and a title insurance executive at Independence Title who has over 40 years of experience in the title insurance business, provided a summary of all of the reasons why any rate decrease of more than 1% would be confiscatory to numerous title agents.
30. David Tandy, founder and recently retired President of Texas Title, provided detailed analyses regarding the housing market, interest rates, median housing prices, inflation, and the lock-in effect of the Covid era interest rate precipitous drop and rapid climb. He specifically addressed the effect on title companies in 2023 to 2025 and beyond.
31. Further, the TLTA actuaries included a detailed analysis and comments on why the TDI report was deficient in several areas. Analysis and comments were also submitted to rebut information furnished by OPIC.
32. It should be obvious that the Order demonstrates that there was no attempt to summarize these comments or concerns and no evidence that they were ever considered before the Order was issued. It further demonstrates conclusively that the Order fails to comply with the rulemaking requirements in Chapter 2001, Subchapter B of the Government Code.

33. Because there was no proper notice, no rule hearing, and a failure to follow proper rulemaking procedure as required by Texas Insurance Code Sections 2703.202, and Texas Government Code Chapter 2001, Subchapter B, especially Sections 2001.021, 2001.024, 2001.029, and 28 Texas Administrative Code Section 1.202, the Order must be vacated. Such failure to comply with Texas Insurance Code Chapter 2703, Texas Government Code Chapter 2001, Subchapter B, and 28 Texas Administrative Code Section 1.202 constitutes violations of statute and the Texas and U.S. Constitutions' due process clauses, actions taken in excess of agency statutory authority, decision-making through unlawful procedure, and an Order that is arbitrary and capricious. The Order and each finding of fact ("FOF") and conclusion of law ("COL") is defective and invalid.

**B. The Order Applies an Unconstitutional and Unauthorized Burden and Standard of Proof on TLTA.**

34. The Order is defective because of misapplication of Texas law and incorporation of the holding in the North Carolina case cited by OPIC's actuary (discussed in paragraph 40 below) for the first time on January 22, 2025, the day before the Public Hearing. It must be vacated.

35. The Order applied an improper burden of proof and standard of proof to the statutory requirement and standards for title premium rates. Title insurance rates

must be “nonconfiscatory as to title insurance companies and title agents.” See Tex. Ins. Code Sec. 2703.152(b)(2).

36. FOF 19 provides, “The commissioner did not receive “**clear and convincing evidence**” that a reduction in rates would lead the **average** title insurance company or title insurance agent to experience **insolvency** or earn an unreasonable rate of return,” citing *Geeslin v. State Farm Lloyds*, 255 S.W.3d 786, 795 (Tex. App.—Austin 2008, no pet.) (emphasis added). First, the use of a “clear and convincing evidence standard” is never mentioned in Chapter 2703 as a standard for title insurance rates. Second, there is no reference in statute to using an “average” title company or agent as the appropriate standard. Instead, the statute requires that rates must be “nonconfiscatory as to title insurance companies and title insurance agents.” See Tex. Ins. Code Sec. 2703.152. Finally, the Order appears to use the “insolvency” standard mentioned in the *Geeslin* case above. As will be further discussed below, this “insolvency standard” was not endorsed by *Geeslin* but rather held to be unconstitutional.

37. Texas Insurance Code Section 2703.152 sets forth the factors the Commissioner is required to consider for fixing title insurance premium rates. The statute requires the Commissioner to consider all relevant income and expenses of title insurance companies and agents attributable to engaging in the business of title insurance in this state. It further requires that the premium rates fixed by the Commissioner

must be reasonable as to the public and nonconfiscatory as to title insurance companies and agents.

38. Texas Insurance Code Chapter 2703, Subchapter E, Section 2703.152 governing the procedure for fixing title insurance rates does not establish a “clear and convincing evidence” standard, and a burden of proof is not mentioned in the Chapter.<sup>2</sup> The burden and legal duty is on the Commissioner and TDI to promulgate and fix rates that comply with statutory requirements. The Order fails to recognize that this has been a duty of TDI for many decades. Unlike other lines of business, title agents and title insurance companies cannot file or fix their own rates. The reference to a burden of proof by “clear and convincing evidence” in *Geeslin* was derived from Texas Insurance Code Art. 5.26-1, which dealt with a short-term phase in of a file and use system at issue in that case. That statutory provision, now expired, applied to homeowner insurance rates, not title insurance. Art. 5.26-1 required an insurer to prove by clear and convincing evidence that a rate reduction specified by TDI and the Commissioner (after the insurer provided its current calculated rate before the transition began) would produce inadequate rates. See *Geeslin* at 795. Art. 5.26-1 was a temporary measure to expedite the insurance transition; a short-term step for moving

---

<sup>2</sup> See footnote 3 in *Geeslin* in which the Court makes it clear that in a contested case where there is a burden of proof, the civil standard of a preponderance of the evidence would apply unless a statute dealing with extraordinary circumstances specifies differently and explicitly in the enabling statute. See *Geeslin* at 797.

homeowners insurance rates to file and use. It is fundamental error to apply a standard from this defunct scheme to a completely different statutory scheme governing title insurance.

39. There is no requirement in Texas Insurance Code Chapter 2703.152 that a nonconfiscatory rate be one that does not cause "*insolvency*," which was required in the Order as reflected in FOF 19. The Court in *Geeslin* was reviewing a rate determination after an insurer had filed a rate, whereas in this case there is no review of a determination. However, *Geeslin* is instructive. There, the Court ruled that a statutory requirement for an insurer to show that a rate would cause insolvency to prove that it is confiscatory is **unconstitutional on its face and as applied**. See *Geeslin* at 795. FOF 19 indicates that an unconstitutional standard was used to evaluate the "nonconfiscatory" element for setting title premium rates. The *Geeslin* court noted that "[r]egulated companies are constitutionally protected from confiscatory rate orders. A government-set rate must allow a regulated company to not only recover its operating expenses, but also to realize reasonable returns on its investments sufficient to assure confidence in the continued financial integrity of the enterprise." See *Geeslin* at 795 (Tex. App.—Austin 2008, no pet.) (citing *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 307, 109 S.Ct. 609, 102 L.Ed.2d 646 (1989); *Railroad Comm'n v. Houston Natural Gas Corp.*,

155 Tex. 502, 289 S.W.2d 559, 572 (Tex. 1956)). A rate that does not allow for a reasonable rate of return is confiscatory and unconstitutional. *See Geeslin* at 795.

40. FOF 19 also states that the “nonconfiscatory” analysis was applied to the “average title insurance company or title insurance agent” (emphasis added). This requirement is further applied in FOF 23: “The average profit must be reasonable, but, as OPIC noted in its report, that is likely to result in some agents making large profits while others do not.” Texas Insurance Code Section 2703.152 does not apply to the “average” title insurance company or title agent, and there is no finding of fact establishing what the “average” is for applying the analysis in the Order. **The Order is apparently applying inapplicable North Carolina case law** cited by OPIC’s actuary in his supplemental report filed with TDI. *See State ex rel. Com'r of Ins. v. N. Carolina Rate Bureau*, 160 N.C. App. 416, 586 S.E.2d 470 (2003), *aff'd*, 358 N.C. 539, 597 S.E.2d 128 (2004). Such use of **inapplicable law** results in a misapplication of Texas law requiring the Order to be vacated. OPIC’s actuary cited to this excerpt from the North Carolina case, which the Order apparently adopted: “The statute contemplates that the rates shall be fixed with a view of the aggregate earnings and profits for the insurance business in the State. Each company may make as much money as it can. Some may make enormous profits, some may do a losing business, but the average profit, that is, the average profit on the aggregate business, must be reasonable.” *See State ex rel.*

*Com'r of Ins. v. N. Carolina Rate Bureau*, 160 N.C. App. 416, 430, 586 S.E.2d 470, 478 (2003), *aff'd*, 358 N.C. 539, 597 S.E.2d 128 (2004).

41. The imposition of a burden of proof, the standard of proof of clear and convincing evidence, application to an “average” agent or insurer, and the unconstitutional requirement of showing insolvency all make the “nonconfiscatory” analysis in the Order invalid and unconstitutional on its face as applied to title agents and insurers. Such Order would violate the due process and takings clauses of the Texas and U.S. Constitutions.
42. A “rule” is a statement of general applicability that implements, interprets, or prescribes law or policy or that describes the procedure or practice requirement of a state agency. See Gov’t Code Sec. 2001.003(6). Interpreting Texas Insurance Code Section 2703.152 to require any of the above showings would constitute invalid *ad hoc* rulemaking—i.e., “rulemaking” without following the procedure required in the Government Code Chapter 2001. See *Tex. State Bd. of Pharmacy v. Witcher*, 447 S.W.3d 520 (Tex. App.—Austin 2014, pet. granted), order withdrawn (Apr. 1, 2016); *Teladoc, Inc. v. Tex. Med. Bd.*, 453 S.W.3d 606, 622 (Tex. App.—Austin 2014, pet. denied); *Tex. Alcoholic Beverage Comm'n v. Amusement & Music Operators of Tex., Inc.*, 997 S.W.2d 651, 660 (Tex. App.—Austin 1999, pet. *dism’d w.o.j.*). In any case, the requirements imposed to show “nonconfiscatory” in the

Order could not be validly adopted even through formal rulemaking because such requirements are remote from the plain meaning of the statute.

43. The Commissioner had the burden to set a non-confiscatory rate. However, the Order demonstrates that TLTA's evidence in the record was not properly considered. The Order makes no mention of the analysis showing that a rate decrease of 8.6% or more would result in an estimated 40% of the Texas title agents operating at a loss based on 2022 statistical reports (compared to approximately 25% of title agents becoming unprofitable annually as set out in TLTA's evidence). The Order includes no findings of fact addressing the adverse local economic impact of the decision to cut rates to any degree, which was described in real world terms by five business leaders from around the state in their written comments. The Order is devoid of findings of fact that talk about future economic conditions and what a 10% rate decrease would look like based on anticipated transaction volumes.

Because of the invalid misapplication of law as set forth in FOF 19 and 23 to the "nonconfiscatory" legal element for setting title premium rates under Texas Insurance Code Section 2703.152 the Order must be vacated. Not only was there a misapplication of law, the Order's nonconfiscatory analysis in FOF 19 and 23 violates statutes and the Constitution, constitutes invalid *ad hoc* rulemaking, exceeds the Commissioner's legal authority, applies an unlawful procedure, is not

supported by substantial evidence, and is arbitrary and capricious. For all the reasons discussed above, the Order as a whole and FOF 19 and 23, and COL 6 are defective and invalid.

**C. The Order Misapplied the Legal Standards for Fixing Premium Rates in Insurance Code Section 2703.152(b) and Failed to Address Evidence on The Confiscatory Nature of a Rate Decrease.**

44. Ratemaking must be prospective in nature. It must consider the future cost estimates for risk transfer and risk retention. If it does not, a title insurance agent and title insurance company will not earn a reasonable rate of return. This is a fundamental principle in the Actuarial Standards of Practice, is embodied in the statutory language of Section 2703.152, and observed by Texas courts as demonstrated in the *Geeslin* case. Here, the Commissioner misapplied the law as TLTA's evidence demonstrating the substantial economic harm of a rate decrease was not addressed in the Order even though premium rates fixed by the Commissioner must be non-confiscatory as to title insurance companies and title insurance agents under Section 2703.152(b)(2).

45. TLTA presented the only evidence with regard to the confiscatory nature of a rate decrease, and the Order's "nonconfiscatory" analysis in FOF 18 – 24 fails to address any of it with any findings of fact or conclusions of law. TLTA presented evidence on the dramatic downturn in the housing market since late 2022,

increased interest rates, increased inflation, the dismal housing market forecast, data on agent solvency implications, written statements by numerous title agents about the struggles they are facing in the current market, and the lock-in effect caused by increased interest rates on current homeowners. The written statements of numerous title agents summarized above, *which was relevant and uncontroverted evidence of the confiscatory nature of a rate decrease*, were not acknowledged or addressed in the Order.

46. TLTA submitted an uncontroverted analysis which concluded that based on 2022 data (not even accounting for the decline seen in 2023), a rate decrease of 8.6% (1.4% less than the 10% called for by the Order) will likely result in 40% of title agents becoming unprofitable (compared to approximately 25% of title agents becoming unprofitable annually as set out in TLTA's evidence).

47. TLTA presented evidence showing that title insurance sales declined in late 2022 resulting in an approximate 40% drop in premium in 2023. Title insurance sales correlate with home sales (and refinance). TLTA's real estate expert David Tandy demonstrated that between mid-2022 and late 2023, the U.S. experienced its fastest-ever deterioration in the housing market, largely due to the market driven surge in home prices, rapidly rising interest rates, inflation in labor and material costs, higher property taxes, and increasing property and casualty insurance costs. Home sales declined 10.4% from 2021 to 2022, 12.3% from 2022 to 2023,

and .4% from 2023 to 2024. After a period of rapidly rising inflation rates, mortgage rates rose from sub 4% to a 23-year high of 7.79 percent in October 2023. Median home prices in Texas rose by 40% between 2019 and 2023, according to a report from the Texas Comptroller, but the number of available homes for sale even more significantly declined. The total volume of sales in number and dollar amounts reached new lows. At the end of the day, the commonly called "lock-in effect" grabbed hold, eliminating a large part of the housing market for resale, and it is still in place today. As a result, residential home sales in Texas are tracking very close to their lowest level in at least ten years and have been on a significant downward trend since the third quarter of 2022 as the Federal Reserve continued to rapidly increase mortgage interest rates. The Fed predicts inflation will not reach its target of 2% until 2027, and therefore interest rate reductions in the near term are unlikely.

48. The Order fails to address any of this relevant evidence about the devastation a rate decrease will cause. TLTA's evidence and testimony about the current depressed state of the title insurance industry and the negative prognosis for recovery was completely un rebutted but inexplicably not considered. Because TLTA's evidence was un rebutted, the Order's conclusion in FOF 19 is not supported by substantial evidence.

49. The Order only summarily deals with TLTA's evidence with an unconstitutional misapplication of law.

50. The Order failed to consider and address uncontroverted evidence about the confiscatory result of a rate change. Such failure resulted in misapplication and violation of law under Texas Insurance Code Section 2703.152 requiring that the Commissioner fix nonconfiscatory title rates. Such failure also constitutes actions taken in excess of agency statutory authority, decision-making through unlawful procedure, a decision not supported by substantial evidence, and an Order that is arbitrary and capricious. The Order as a whole and FOF 19 and 24 and COL 6 are defective and invalid.

**D. The Order Misapplied the Legal Standards for Fixing Premium Rates in Section 2703.152 and Fails to Consider All Relevant Income and Expenses to Prospectively Set Rates for the Rating Period.**

51. Furthermore, the Commissioner misapplied the law because Texas Insurance Code Section 2703.152 requires consideration of "**all** relevant income and expenses attributable to engaging in the business of title insurance in this state" and would be "reasonable as to the public" and "non-confiscatory to title insurance companies and title insurance agents." (Emphasis added). The Order makes no mention of the Texas real estate forecast and economic conditions in David Tandy's oral testimony or written comments when the 10% rate decrease

will be in effect or other evidence of current market conditions that was compiled and presented at the repeated request of TDI Staff.

52. In failing to consider this evidence, the Commissioner failed to consider ***all relevant income and expenses of title insurance companies and title insurance agents*** attributable to engaging in the business of title insurance in this state as required by Section 2703.152.
53. Evidence that the housing market declined starting in late 2022 due to increases in mortgage rates and home prices and TLTA's actuary's report demonstrating that 2023 data would capture the market conditions during the rating period was uncontroverted. Title insurance sales correlate with home buying and refinance. TLTA provided voluminous evidence on housing and title market conditions in 2023 through real estate expert David Tandy and actuary Khiem Ngo. The Order even acknowledges the housing market downturn in FOF 16, but does nothing further to address it.
54. TDI has not yet published its 2023 data under Texas Insurance Code Section 2703.153, and the Order notes that some agents and agencies have not yet submitted data. This is an insufficient and unsupported reason for delay – there is nothing in the statutes or rules that permits TDI to delay until a perfect report is possible. However, as noted above, there is an abundance of other data available as referenced in reports filed by TLTA. The Order does not provide any

indication of the scope or materiality of data not provided or the level of completeness of TDI's 2023 data. Regardless, Texas Insurance Code Section 2703.152 requires consideration of the 2023 data in TDI's possession. FOF 22 indicates that premium revenue for 2023 was considered, however, there is no indication in the Order that the income and expense data TDI has in its possession from the 2023 data call was considered. FOF 14 indicates that only information submitted in TLTA, OPIC, and TDI reports was reviewed with regard to evaluating "all relevant income and expenses...." Not considering 2023 data paints an incomplete picture of relevant market history and post-pandemic market trends. Given the indisputable relevance of 2023 experience, if TDI's 2023 data was not considered, then there is no other alternative than to accept in its entirety the best evidence concerning 2023 – the experience captured by TLTA's actuary's survey of agents representing 50% of title insurance premium volume in Texas.

55. Rate reductions of 3.8% or more indicated by TLTA, TDI, and OPIC's actuaries rely on income and expense lookback periods that end before 2023 and do not include 2023 data. Therefore, the 10% rate reduction called for in the Order must not have included any 2023 expense consideration since the Order only reviewed reports by those actuaries. Rates are set ***prospectively*** for the rating period, not the past, in order to allow regulated companies to recover their operating

expenses and realize a reasonable rate of return. *See Geeslin v. State Farm Lloyds*, 255 S.W.3d 786, 795 (Tex. App.—Austin 2008, no pet.)(regulated companies are constitutionally protected from confiscatory rate orders; a government-set rate must allow a regulated company to not only recover its operating expenses, but also to realize reasonable returns on its investments sufficient to assure confidence in the continued financial integrity of the enterprise).

56. TLTA demonstrated emphatically in its supplemental exhibit that relying solely on historical experience is only appropriate if a similar experience is expected in the rating period. The TDI Report fails to take into account the significant downturn that started in the fall of 2022, caused by a depressed housing market. The depressed housing market was primarily driven by an immediate decrease in interest rates to address Covid economic concerns, followed by rapidly accelerating higher interest rates to address inflation. The total premium written in 2023 was available to TDI staff and it was not considered. As shown by TLTA, the total premium written in CY2023 is 33% less than CY2022. Expense ratio measures how high expenses are relative to income (expense divided by premiums). The higher the expense ratio, the higher expenses are relative to income. TLTA's actuary demonstrated that there was an increase of title agents' expense ratio from approximately 86% in 2019 (before Covid) to approximately 95% in 2023 (based on a survey of 37 title agents accounting for about 50% of

title insurance premium). In other words, because transaction volume, and thus premium volume, are down and will be down during the time period when the rate is in effect, the expense ratio will be up because there are not as many revenue dollars available to pay a title agent's or title insurer's costs. Therefore, only TLTA's actuarial analysis properly accounts for the future cost estimates for prospective risk transfer and risk retention in the Texas title insurance industry.

57. FOF 17 states that "[a] reduction in title insurance basic premium rates would likely help bring the actual profit ratio closer to the target." This finding is not supported by any substantial evidence without specific findings and analysis of 2023 title agent and title insurer expenses (and 2024 or later data to the extent available). Such an analysis would necessarily include consideration of the 2023 data in TDI's possession in order to satisfy the statutory requirement consider "all relevant income and expenses . . . ." See Tex. Ins. Code Sec. 2703.152. TLTA's uncontroverted evidence that the expense ratio in 2023 was about 10 percentage points higher than pre-Covid periods with similar premium volume was not considered.

58. In the supplemental report filed by TLTA, it provided data showing the decreasing number of title policies in 2023 and through 2024. This data is readily available and both OPIC, TDI staff and the Order failed to recognize this important information. Data from TLTA's supplemental report shows the following number

of policies by quarter in 2023 and 2024 for purpose of reporting title guaranty fees to TTIGA:

Year	1st Q	2nd Q	3rd Q	4th Q	Totals
2023	258,721	325,417	296,305	259,873	1,140,316
2024	250,682	308,749	284,697		

The total number of policies in 2023 was 1,140,316. This is a significant decrease from the total number of policies in 2022 (1,477,531 policies), 2021 (1,959,133 policies), and 2020 (1,723,074 policies). Other information furnished by TLTA in its supplemental report and ignored was (1) a report on real estate transactions and the downward trend that has been occurring since 2023 and projected to continue; and (2) downward trend on mortgage transactions. These downward trends in transactions all would result in expected decreases in title premium without a significant decrease in expenses during the rating period; in other words, the expense ratio would be higher in the future.

59. In addition, by concentrating only on what TDI staff refers to as high profits in earlier periods, their analysis ignores the fact that title insurance is a transaction dependent business where premium volume is highly correlated with **expense ratio**. For example, the title insurance rate can be lower at higher premium volume, but the title insurance rate needs to be higher at lower premium volume.

60. The Order fails to consider the extreme inflation during the 2023-2024 time period. TLTA demonstrated at the Public Hearing that using historical experience for the past 5 to 15 years gives too much weight to the pandemic periods 2020 through 2022. The experience during these Covid years is not going to be repeated during the period the 10% rate decrease would be in effect. By giving too much weight to 2020 through 2022 it results in higher premium volume and lower expense ratio than what is expected during the rating period. It dramatically skews the outcome, which is apparent by a simple comparison of the indicated ranges offered by TLTA as opposed to TDI and OPIC. That results in a rate change that is significantly lower than appropriate levels for the current title insurance market conditions. Given the importance of the **expense ratio**, any scenarios used to develop the rate change should result in premium volume that is similar to what is expected during the rating period. In order for the title insurance rates to be actuarially sound, the recent downturn in the title insurance market has to be considered in the rating analysis in order to reflect the current title insurance market conditions.

61. By failing to consider 2023 income and expense data in possession of TDI staff, TLTA's uncontroverted 2023 income and expense data, and the other evidence presented by TLTA as discussed above, the Commissioner failed to comply with Texas Insurance Code Section 2703.152, which constitutes a violation of law,

action taken in excess of agency statutory authority, decision-making through unlawful procedure, a decision not supported by substantial evidence, and an Order that is arbitrary and capricious. The Order as a whole and FOF 10-17, especially FOF 14, 17, and 22, and COL 6 are defective and invalid.

**E. Conclusion of Law 6 Reducing Rates by 10% is Arbitrary and Capricious.**

62. The Order recites the loss ratio method used in actuarial reports by TDI, TLTA, and OPIC. The loss ratio method includes factors that were discussed at length by actuaries for TDI, TLTA, and OPIC, including the profit provision and cost of capital, the experience periods considered, expense ratio, and loss adjustment expense ratios.

63. The Order recites the rates indicated by actuaries for TDI, TLTA, and OPIC, and the methodologies for each actuary are set out in their reports. See FOF 10 through 13 and 24.

64. The Order fails to set forth the specific findings of fact for each of the numerical elements that feed into the 10% rate reduction to support COL 6. There is no finding of fact establishing the Commissioner's selected cost of capital, profit provision, the experience periods considered, expense ratio, or loss adjustment expense ratios that were used to draw the conclusion in COL 6. *See Tex. Health Facilities Comm'n v. Charter Med.-Dallas, Inc.*, 665 S.W.2d 446, 451 (Tex. 1984)

(Holding that valid findings of fact must be clear and specific. A mere conclusion or a recital of evidence is inadequate; the required underlying facts may not be presumed from findings of a conclusional nature; in general, underlying findings of fact must be such that the reviewing court can fairly and reasonably say that the underlying findings support the statutorily required criteria).

65. Setting out the numerical inputs chosen to support the rate ordered is a feature of rate orders in promulgated rate states and past orders of the Commissioner when multiple rate indications are being considered. It is critical to establish which inputs are selected in the loss ratio method, particularly with regards to the profit provision and expense ratio, to be able to legally support the selected rate indication. Without specific findings of fact to support the rate change ordered, the rate is arbitrary and capricious.

66. The findings of fact, including FOF 10 through 13 and 24, merely recite evidence and are insufficient to support the rate indicated in the order. COL 6 was arbitrarily pulled out of a range of rate indications discussed in the Order as mere recitation of facts. Accordingly, COL 6 cannot stand. Issuance of the arbitrary Order also constitutes action in excess of agency statutory authority and a decision made through unlawful procedure. The Order as a whole and FOF 10 through 13 and 24 and COL 6 are defective and invalid.

**F. The Calculation Error in the Schedule of Basic Premium Incorporated into the Order as Exhibit A Renders it Invalid.**

67. The Table of Texas Title Insurance Basic Premium Rates attached as Exhibit A to the Order does not accurately reflect COL 6 calling for a 10% reduction in the title insurance basic premium rates. Applying the ordered 10% reduction to the existing multipliers results in a 6 decimal multiplier. Column 4 of the Table is intended to reflect the rate for the top of the previous row policy range, which policy amount and rate are subtracted out to allow for a progressively declining rate at each bracket. That rate amount is then added back into the final calculation of the policy amount. The rounding of the multiplier to 5 decimal places results in an incorrect Add for each Policy Range. The error in Exhibit A creates a conflict and ambiguity in the order.

**IV.**

**Conclusion & Request for Relief**

68. For all the reasons and defects and errors discussed above, TLTA requests that the Order be vacated. For all the reasons set forth above, TLTA requests the Commissioner grant a rehearing, reconsider her denial of TLTA's Petition for rulemaking under Texas Government Code Ch. 2001 by Commissioner Order No. 2024-9045, and grant TLTA's Petition for rulemaking under Texas Government

Code Ch. 2001 and publish and adopt TLTA's proposed rule attached to its  
Petition.

69. TLTA respectfully requests that the Commissioner vacate the Order by March 6,  
2025. TLTA reserves the right to take other appropriate legal action if the Order is  
not vacated.

WHEREFORE, PREMISES CONSIDERED, TLTA respectfully requests that the  
Commissioner grant the relief requested herein and in TLTA's Petition.

Respectfully Submitted,



---

Michael Nored  
State Bar No. 24007758  
Jay Thompson  
State Bar No. 19921500  
Mitchell Williams Selig Gates and Woodyard,  
P.L.L.C.  
500 W. 5<sup>th</sup> Street, Suite 1150  
Austin, Texas 78701  
Tel: 512-480-5100  
Fax: 512-480-5154  
mnored@mwlaw.com  
JThompson@mwlaw.com

MCGINNIS LOCHRIDGE LLP

/s/ Ray Chester

Ray Chester  
State Bar No. 04189065  
Andrew Edge  
State Bar No. 24071446  
1111 W. 6th Street, Bldg. B, Suite 400  
Austin, TX 78703  
Phone: 512-495-6000  
Facsimile: 512-495-6093  
rchester@mcginnislaw.com  
aedge@mcginnislaw.com

*Attorneys for Texas Land Title Association*

## CERTIFICATE OF SERVICE

I hereby certify that I have this 26<sup>th</sup> day of February, 2025, served copies of the foregoing pleading upon all other parties to this proceeding in the following manners:

Via Email: [ChiefClerk@tdi.texas.gov](mailto:ChiefClerk@tdi.texas.gov) &

Via Certified Mail, Return Receipt Requested & Regular Mail

Chief Clerk, MC: GC-CCO

Texas Department of Insurance

P.O. Box 12030

Austin, Texas 78711-2030

Via Email: [dbolduc@opic.texas.gov](mailto:dbolduc@opic.texas.gov) &

Via Certified Mail, Return Receipt Requested & Regular Mail

David Bolduc

Public Counsel

Office of Public Insurance Counsel

1601 Congress Avenue, Suite 3.500

Austin, Texas 78701-3942

Via Email: [dsalzer@opic.texas.gov](mailto:dsalzer@opic.texas.gov) &

Via Certified Mail, Return Receipt Requested & Regular Mail

Drew Salzer

Deputy Public Counsel

Office of Public Insurance Counsel

1601 Congress Avenue, Suite 3.500

Austin, Texas 78701-3942



---

Michael Nored

**TEXAS DEPARTMENT OF INSURANCE**  
**NOTICE OF PUBLIC HEARING**  
**Consideration of a Request to Change the**  
**Title Insurance Basic Premium Rates**  
**Docket No. 2851**

On November 1, 2024, the Texas Land Title Association (TLTA) requested that the commissioner hold public hearing under Insurance Code §2703.202 to consider title insurance premium rates.

The commissioner will accept written and oral comments on title insurance premium rates in a public hearing under Docket No. 2851 at 2:00 p.m. on Tuesday, January 21, 2025, in Room 2.035 of the Barbara Jordan Building, 1601 Congress Ave., Austin, Texas.

The commissioner will take all comments into consideration and will consider each matter presented in the hearing. The commissioner will announce all decisions on the matter in a public hearing at 2:00 p.m. on Thursday, February 6, 2025, in Room 2.034 of the Barbara Jordan Building, 1601 Congress Ave., Austin, Texas.

You can review or get copies of TLTA's request and supporting documentation:

- **Online:** Go to [www.tdi.texas.gov/rules/2024/exrules.html](http://www.tdi.texas.gov/rules/2024/exrules.html).
- **By mail:** Write to the Texas Department of Insurance, Office of the Chief Clerk, MC: GC-CCO, P.O. Box 12030, Austin, Texas 78711.
- **In person:** You can review the filing at the Texas Department of Insurance, Office of the Chief Clerk, 1601 Congress Ave., Austin, Texas 78701 during regular business hours. To schedule a time to review the materials in person, please email [ChiefClerk@tdi.texas.gov](mailto:ChiefClerk@tdi.texas.gov).

To comment on title insurance premium rates in writing, TDI must receive your comment by 5 p.m. on January 21, 2024. You can send written comments

- **Online:** To [ChiefClerk@tdi.texas.gov](mailto:ChiefClerk@tdi.texas.gov).
- **By mail:** Write to Texas Department of Insurance, Office of the Chief Clerk, MC: GC-CCO, P.O. Box 12030, Austin, Texas 78711.
- **In person:** You can hand deliver comments directed to the Texas Department of Insurance, Office of the Chief Clerk, 1601 Congress Ave., Austin, Texas 78701 during regular business hours.

## **EXHIBIT B**

Notice of Public Hearing  
Consideration of a Request to Change the

Title Insurance Basic Premium Rates

Docket No. 2851

On November 1, 2024, the Texas Land Title Association (TLTA) requested that the commissioner hold a public hearing under Insurance Code §2703.202 to consider title insurance premium rates.

The commissioner will accept written and oral comments on title insurance premium rates in a public hearing under Docket No. 2851 at 2:00 p.m. on Tuesday, January 21, 2025, in Room 2.035 of the Barbara Jordan Building, 1601 Congress Ave., Austin, Texas 78701.

The commissioner will take all comments into consideration and will consider each matter presented in the hearing. The commissioner will announce all decisions on the matter in a public hearing at 2:00 p.m. on Thursday, February 6, 2025, in Room 2.034 of the Barbara Jordan Building, 1601 Congress Ave., Austin, Texas 78701.

You can review or get copies of TLTA's request and supporting documentation:

- Online: Go to [www.tdi.texas.gov/rules/2024/exrules.html](http://www.tdi.texas.gov/rules/2024/exrules.html).

- By mail: Write to the Texas Department of Insurance, Office of the Chief Clerk, MC: GC-CCO, P.O. Box 12030, Austin, Texas 78711.

- In person: You can review the filing at the Texas Department of Insurance, Office of the Chief Clerk, 1601 Congress Ave., Austin, Texas 78701 during regular business hours. To schedule a time to review the materials in person, please email [ChiefClerk@tdi.texas.gov](mailto:ChiefClerk@tdi.texas.gov).

To comment on title insurance premium rates in writing, TDI must receive your comment by 5:00 p.m. on January 21, 2025. You can send written comments:

- Online: To [ChiefClerk@tdi.texas.gov](mailto:ChiefClerk@tdi.texas.gov).

- By mail: Write to Texas Department of Insurance, Office of the Chief Clerk, MC: GC-CCO, P.O. Box 12030, Austin, Texas 78711.

- In person: You can hand deliver comments directed to the Texas Department of Insurance, Office of the Chief Clerk, 1601 Congress Ave., Austin, Texas 78701 during regular business hours.

TRD-202405477

Jessica Barta

General Counsel

Texas Department of Insurance

Filed: November 8, 2024