

President  
Claire Hartman, CTIP



Executive Vice President & CEO  
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August 5, 2024

Jessica Barta  
General Counsel  
Texas Department of Insurance  
c/o Office of the Chief Clerk (MC: GC-CCO)  
P.O. Box 12030  
Austin, Texas 78711-2030  
**SENT VIA EMAIL ONLY AT [ChiefClerk@tdi.texas.gov](mailto:ChiefClerk@tdi.texas.gov)**

**RE: TLTA's Written Comments on Proposed Revisions to Title 28., Part 1., Chapter 1., Subchapter A. Rules of Practice and Procedure Division, 1. General Procedural Provisions**

Dear Ms. Barta,

The Texas Land Title Association (TLTA) appreciates the opportunity to comment on the proposed changes to the Texas Administrative Code (TAC), Subchapter A, Section 1. General Procedural Provisions, which include the repeal of Title 28 TAC Sections 1.47-1.49, 1.51, 1.52, 1.88 and 1.89, the revisions to Title 28 TAC Section 1.32, and the new Title 28 TAC Section 1.47. Founded in 1908, TLTA is a statewide trade association representing the Texas title insurance industry and currently serves over 20,000 professionals involved in the safe and efficient transfer of real estate. With active members in virtually every county in Texas, TLTA membership comprises over 80 percent of all title insurance agents and underwriters licensed to do business in Texas.

We applaud your approach to the modernization of Title 28 and the Department's general procedural provisions, which impact all of our members' due process rights. We are writing to provide comments on the proposed rule changes, which include observations regarding the proposed changes as well as novel suggestions for changes in these sections. After reviewing the proposed amendments, we would like to offer the following suggestions to ensure the maintenance of clarity, efficiency, and due process in this revision process.

### **Comments on Proposed Changes**

- 1. Would the Department consider prescribing the actual text and formatting of the required disclosures about a person's procedural rights that are only substantially addressed in proposed 28 TAC Section 1.47(a)(6) like they are currently in 28 TAC Section 1.88(c) to ensure license holders are aware of the consequences of failing to response to a Notice of Allegations?**

It is important that license holders be made aware of the consequences of failing to respond to the Department's allegations. The proposed rule imposes substantial expectations for such a warning statement in new 28 TAC Section 1.47(a)(6), but it would be beneficial if standard language in large, bold face font were promulgated by the Commissioner so that all license holders receive the same information in a format that draws that license holder's attention to the importance of the regulatory notice he or she has received via certified mail. In the proposed new 28 TAC Section 1.47(a)(6), we recommend keeping the requirement that a statement that notifies the person of their due process rights be given in the notice, but specifying the text and formatting akin to the required disclosure in former 28 TAC Section 1.88(c). For example, new 28 TAC Section 1.47(a)(6) would read "statements in capital letters and 12-point boldface type as follows:" and contain the required language based on Subsections (A) through (C) that is similar to the language currently prescribed in 28 TAC Section 1.88(c) and reprinted below:

IF YOU DO NOT FILE A WRITTEN RESPONSE TO THIS NOTICE WITH THE STATE OFFICE OF ADMINISTRATIVE HEARINGS WITHIN 20 DAYS OF THE DATE THIS NOTICE WAS MAILED, THE SCHEDULED HEARING MAY BE CANCELED AND THE COMMISSIONER OF INSURANCE MAY GRANT THE RELIEF SET OUT IN THIS NOTICE OF HEARING, INCLUDING REVOCATION OF YOUR LICENSE(S) BY DEFAULT. IF YOU FILE A WRITTEN RESPONSE BUT THEN FAIL TO ATTEND THE HEARING, THE COMMISSIONER OF INSURANCE MAY GRANT THE RELIEF SET OUT IN THIS NOTICE OF HEARING, INCLUDING REVOCATION OF YOUR LICENSE(S) BY DEFAULT.

Although we do not anticipate this language would leave the form in the near term, we think it an important requirement to keep in place to ensure that future administrators properly emphasize the importance of this notice and that the consequences for failure to respond remain unmistakable and obvious for the recipient. We appreciate that it is the duty of the regulated to stay engaged and informed, however given the importance of the procedural rights impacted by this notice, the rule should preserve the practice of prescribing the content and formatting of the required language.

**2. Would the Department consider revising 28 TAC Section 1.47(d) to clarify who has the right to file a motion to set aside a default order regardless of the nature of the case hearing?**

The current proposed changes to 28 TAC Section 1.47 includes the following language in subsection (d):

(d) A party in the contested case may file a motion with TDI to set aside a default order entered under this section and reopen the record.

The rule as proposed suggests that a case has not been docketed at the State Office of Administrative Hearings (SOAH). Subsection (a) states "[b]efore docketing a contested case with the ...". Therefore, at this point in the process, it does not appear that a "contested case"



exists. As such, perhaps the below language might better clarify who has a right to file a motion and avoid any questions about the nature of the proceeding, informal, contested or otherwise:

(d) ~~A party in the contested case~~ A person against whom a default order has been entered may file a motion with TDI to set aside a default order entered under this section and reopen the record.

### New Concepts for Consideration

**3. Would the Department consider establishing a timeframe for holding a hearing under 28 TAC Section 1.32 to establish clear expectations and ensure efficiency in resolving any disagreements involving licensing decisions?**

We recommend amending 28 TAC Section 1.32 to add an additional sentence which specifies a timeframe within which the requested hearing should take place, perhaps a period of up to 180 days. Specifying a clear timeframe for hearings will help manage applicants' and license holders' expectations and streamline the administrative process, providing clarity to both the applicant/licensee and the agency.

**4. Would the Department consider adding a requirement for the method of delivery of a default order in 28 TAC Section 1.47(c)(6) to clarify how the named party will receive the Commissioner's Order?**

Proposed 28 TAC Section 1.47 does not directly address how the default order will be delivered to the named party. For the purpose of establishing clarity, 28 TAC Section 1.47(c)(6) could be added addressing the delivery of the default order as follows:

(6) The default order shall be mailed to the affected party in the same manner as the notice of allegations.

This addition ensures that parties receive default orders through a reliable and consistent method, mirroring the process for delivering the notice of allegations. The existing 28 TAC Section 1.88 requires notices be sent by certified mail, ensuring documented receipt. It is an important element of due process for the accused and their counsel to be able to determine as soon as possible and with certainty when the period has begun and will end. This enables the accused to provide an appropriate and timely response to the default order.

We appreciate the opportunity to provide input on these proposed changes and hope that these suggestions are helpful in contributing to an efficient and transparent process for handling contested cases.

Thank you for your consideration.

Sincerely,



Claire Hartman, CTIP  
President



Leslie Midgley, CAE  
Executive Vice President and CEO