

Comparison of Title Insurance Differences Between Texas and ALTA States

The University of Texas School of Law 2023 Renewable Energy Law Essentials

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1

Overview

- Similarities between Texas and ALTA States
- Differences between Texas and ALTA States
 - Search Customs
 - Pricing/Fees
 - Forms
- Specific examples/scenarios of form differences in practice
 - Non-Imputation
 - Minerals
 - Mechanic's Liens
 - Energy Endorsements (ALTA)

2

General Title Concepts – Similarities (TX/ALTA)

- Regulated (TX – Texas Department of Insurance)
- Similar Policy Forms
 - Schedule A - who owns what
 - Schedule B – what land is subject to
 - *difference – TX has Schedule C (requirements) instead of Schedule B1 (requirements)
 - *difference - Cannot delete several of the general exceptions
- Insures Site Control
 - Landowner Authority, Vesting
- Affirmative coverage can be issued expressly (Schedule B) or via endorsement
 - *TX is very limited in affirmative coverage “express coverage” and endorsements.

3

Differences Between TX and ALTA States – Search Customs

- Texas – “Plant State” – title company must have a plant in the county or work with a local agent who does. If no Plant in county, third party may conduct search
- Other States:
 - Attorney States – based on UPL. Attorney must carry out title search, exam title and issue title opinion or commitment
 - Abstract States – title insurance must be based on an abstract and attorney title opinion
 - Countersignature – local agent must countersign
 - No Regulations
 - Iowa- Illegal in Iowa for title companies to issue title insurance within Iowa. Title insurance must be issued outside of Iowa

4

Differences Between TX and ALTA States – Search Customs

- How far back do we search? It depends
 - TX – typically patent, given mineral severances and the fact that most counties have Plants that go back to patent
 - Due to the location of energy projects (rural), many times the land has not been searched before. These searches entail risk as the land is usually going from farm land to an energy site where surface use is extensive
- ALTA States - How “old” is the State? Is there historic mineral production?
- In many cases, 100-150 year search is sufficient. Some states search can be 60 years.
- Issues
 - Court house burned down
 - Cannot go back to 1700s

5

Differences Between TX and ALTA States – Pricing/Fees: Premiums

- Promulgated Title Insurance Rates
 - TX – TDI (Plug and Play)
 - Similarly, NM and FL
 - Carve out for FL (Butler Rule)
- ALTA States
 - Filed States (Rating Bureau) – title companies jointly file rates with respective department of insurance and all use same rates
 - Filed States – title companies individually file rates
 - Some states have rules that allow pricing to be negotiable if policy amount is over a certain threshold
 - Non-filed – negotiable states

6

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Title search: Comparison of Title Insurance Differences Between Texas and ALTA States

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