

# NEW MEXICO PUBLIC REGULATION COMMISSION

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November 19, 2007

Governor Bill Richardson  
Office of the Governor  
490 Old Santa Fe Trail  
Room 400  
Santa Fe, NM 87501

**RE: New Mexico Public Regulation Commission's Request to Place  
Title Insurance on the Governor's Call**

Dear Governor Richardson:

The members of the Public Regulation Commission respectfully request that you place Title Insurance on the call for the 2008 Session of the New Mexico Legislature. This request is based on the need for proposed amendments to the New Mexico Title Insurance Law ("Act"), NMSA 1978, § 50A-30-1 *et seq.*

The business of title insurance has been completely regulated by the State of New Mexico since the passage of the Act in 1985. This regulatory authority includes the standardization of rates and forms promulgated annually by the Superintendent of Insurance. The Act has denied consumers the opportunity to benefit from competition among title insurance companies based on price or value.

In addition, the title insurance industry has benefited in recent years from statutory immunity from negligence suits. The Act currently provides that "[t]he duty to search and examine imposed by this section is solely for the purpose of enhancing the financial stability of title insurers for the benefit of insureds under title insurance policies." NMSA 1978, § 59A-30-11(A). The Act further provides that "[t]he New Mexico Title Insurance Law is not intended and should not be construed to create any duty to search and examine that runs to the benefit of, or to create any right or cause of action in favor of, any person other than a title insurer." NMSA 1978, § 59A-30-11(A). This language was added to the Act in 1999.

Thus, unlike virtually every other professional or service provider in New Mexico, if a title agent or insurer makes a mistake due to negligence that results in monetary damages to the customer, the customer has no legal recourse to recover those damages. This is a complex issue, since many potential errors and omissions will be compensated under the title insurance policy. However, when errors occur that relate to the search performed for the policy, but fall outside the policy language, customers are now left high and dry. The removal of this language will allow New Mexico insureds to sue title insurers for negligent

searches and examinations of a title and will make the title insurance industry like other sectors of the insurance industry which are subject to negligence lawsuits.

This amendment will have a fiscal impact on the title insurers operating in New Mexico, because they will be subject to liability for their negligence. However, depending on the final version of the proposed amendments, this amendment may not have a fiscal impact on the title insurance agents in New Mexico. Opposition to the amendment will most likely come from the title insurance underwriters. Supporters of this amendment will include New Mexico title insurance policyholders, Think New Mexico, and various plaintiffs' attorneys.

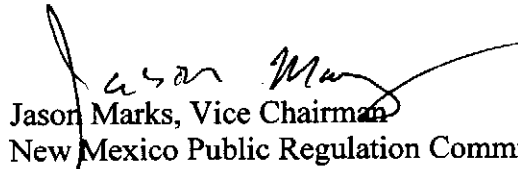
With respect to rate regulation reform, the Public Regulation Commission and its Insurance Division have gathered information and conducted advisory group meetings this year. As a result, we believe that alternative regulatory models are available that can bring the benefits of competition to this important area, without exposing consumers to undue risks. Two states, Florida and California, have recently adopted similar systems.

Thank you for your consideration of this request. If you have any questions regarding this request, please feel free to contact us.

Sincerely,



Ben R. Lujan, Chairman  
New Mexico Public Regulation Commission



Jason Marks, Vice Chairman  
New Mexico Public Regulation Commission



Sandy Jones, Commissioner  
New Mexico Public Regulation Commission



David King, Commissioner  
New Mexico Public Regulation Commission

**TELEPHONICALLY APPROVED**

Carol Sloan, Commissioner  
New Mexico Public Regulation Commission

cc: Eric Witt, Legislative Analyst