Insuring Construction Transactions

Texas Land Title Institute
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Professional:

Bruce Goldston was in private practice for 15 years, where he concentrated on real estate, probate and commercial matters. He subsequently handled bank closings and commercial and real estate litigation for the Federal Deposit Insurance Corporation for 3 years. In 1996 he joined Alamo Title Insurance as Claims Counsel where he supervised the administration and resolution of all claims which arose from policies issued by Alamo Title in Texas and New Mexico. In July, 1998, he became Underwriting Counsel for Fidelity National and Alamo Title, and in 2009 he was named by Fidelity as State Counsel for Texas and Oklahoma. He joined WFG National Title Insurance Company as Vice President and Regional Counsel of the Southwestern Region in March, 2010, where he supervises underwriting for Texas and Oklahoma.

Education:

Austin College
Sherman, Texas
BA 1972

St. Mary’s University School of Law
San Antonio, Texas
JD 1975

Training/Speaking Experience:

Mr. Goldston has spoken over 260 times on title insurance, underwriting, claims and legal issues. Some of the topics he has covered include:

- Introduction to Title Insurance
- Avoiding and Administering Claims
- Current Underwriting Issues
- Home Equity Lending
- Intestate Succession
- Reverse Mortgages
- Taxes and Title Insurance
- Regulatory Issues
- Minerals and Title Insurance
- Manufactured Housing
- Insuring Construction Transactions
- Insuring Around
- Legislative Updates
- Ethics for Title Company Employees
- Voluntary and Involuntary Liens
- Escrow and Indemnity Agreements
- Business Entities
- Title Policy Endorsements
- Examining
- Insuring Around
- Probate
- Bankruptcy
- Foreclosures
- Homesteads
- Easements
- Marital Rights
- Surveys

2015 TEXAS LAND TITLE INSTITUTE - INSURING CONSTRUCTION TRANSACTIONS
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The objective of this presentation is to examine closing procedures, policy coverages, and procedural and rate rules which affect construction transactions.

I. WHAT Qualifies AS A CONSTRUCTION TRANSACTION?

A. When an Owner Policy (OP) is issued in an amount which includes the cost of immediately contemplated improvements.

B. When a Loan Policy (LP) is issued prior to completion of improvements made under a mortgage given in whole, or in part for the cost of improvements.

C. Whenever you are issuing an Interim Construction Binder (ICB).

II. WHAT SPECIAL DOCUMENTATION SHOULD YOU HAVE AT CLOSING

A. Homestead construction: A mechanic’s lien contract must be signed by both spouses. You need the original MLC or a file stamped copy showing that it has already been recorded. The MLC is usually assigned to the lender (sometimes in the MLC itself); the borrower signs the note and deed of trust to the lender, and the deed to trust renews and extends the MLC.

Texas Constitution, Art. XVI, Sec. 50. HOMESTEAD; PROTECTION FROM FORCED SALE; MORTGAGES, TRUST DEEDS, AND LIENS. (a) The homestead of a family, or of a single adult person, shall be, and is hereby protected from forced sale, for the payment of all debts except for:
(5) work and material used in constructing new improvements thereon, if contracted for in writing, or work and material used to repair or renovate existing improvements thereon if:
(A) the work and material are contracted for in writing, with the consent of both spouses, in the case of a family homestead, given in the same manner as is required in making a sale and conveyance of the homestead;

(B) the contract for the work and material is not executed by the owner or the owner's spouse before the fifth day after the owner makes written application for any extension of credit for the work and material, unless the work and material are necessary to complete immediate repairs to conditions on the homestead property that materially affect the health or safety of the owner or person residing in the homestead and the owner of the homestead acknowledges such in writing;

(C) the contract for the work and material expressly provides that the owner may rescind the contract without penalty or charge within three days after the execution of the contract by all parties, unless the work and material are necessary to complete immediate repairs to conditions on the homestead property that materially affect the health or safety of the owner or person residing in the homestead and the owner of the homestead acknowledges such in writing; and

(D) the contract for the work and material is executed by the owner and the owner’s spouse only at the office of a third-party lender making an extension of credit for the work and material, an attorney at law, or a title company;

Texas Property Code Sect. 53.254 Homestead
(a) To fix a lien on a homestead, the person who is to furnish material or perform labor and the owner must execute a written contract setting forth the terms of the agreement.
(b) The contract must be executed before the material is furnished or the labor is performed.
(c) If the owner is married, the contract must be signed by both spouses.

B. Non homestead construction: You will need a lien instrument which may be titled a construction agreement or contract or a construction deed of trust. The lien must be created in favor of the insured or transferred to the insured. It may or may not contain provisions relating to construction draws; our P 8b exceptions will control when and what we insure.

C. You need assurance that construction has not commenced. Who can you trust? This is a more important issue in homestead construction because it goes to the validity of the lien and not just the priority of the lien.

Texas Property Code Sec. 53.123. PRIORITY OF MECHANIC’S LIEN OVER OTHER LIENS.
(a) Except as provided by this section, a mechanic's lien attaches to the house, building, improvements, or railroad property in preference to any prior lien, encumbrance, or mortgage on the land on which it is located, and the person
enforcing the lien may have the house, building, improvement, or any piece of the railroad property sold separately.
(b) The mechanic's lien does not affect any lien, encumbrance, or mortgage on the land or improvement at the time of the inception of the mechanic's lien, and the holder of the lien, encumbrance, or mortgage need not be made a party to a suit to foreclose the mechanic's lien.

Texas Property Code Sec. 53.124. INCEPTION OF MECHANIC'S LIEN.
(a) Except as provided by Subsection (e), for purposes of Section 53.123, the time of inception of a mechanic's lien is the commencement of construction of improvements or delivery of materials to the land on which the improvements are to be located and on which the materials are to be used.
(b) The construction or materials under Subsection (a) must be visible from inspection of the land on which the improvements are being made.
(c) An owner and original contractor may jointly file an affidavit of commencement with the county clerk of the county in which the land is located not later than the 30th day after the date of actual commencement of construction of the improvements or delivery of materials to the land. The affidavit must contain:
   (1) the name and address of the owner;
   (2) the name and address of each original contractor, known at the time to the owner, that is furnishing labor, service, or materials for the construction of the improvements;
   (3) a description, legally sufficient for identification, of the property being improved;
   (4) the date the work actually commenced; and
   (5) a general description of the improvement.
(d) An affidavit filed in compliance with this section is prima facie evidence of the date of the commencement of the improvement described in the affidavit. The time of inception of a mechanic's lien arising from work described in an affidavit of commencement is the date of commencement of the work stated in the affidavit.
(e) The time of inception of a lien that is created under Section 53.021(c), (d), or (e) is the date of recording of an affidavit of lien under Section 53.052. The priority of a lien claimed by a person entitled to a lien under Section 53.021(c), (d), or (e) with respect to other mechanic's liens is determined by the date of recording. A lien created under Section 53.021(c), (d), or (e) is not valid or enforceable against a grantee or purchaser who acquires an interest in the real property before the time of inception of the lien.
III. WHAT DO YOU DO IF CONSTRUCTION HAS ALREADY COMMENCED?

A. Homestead construction: At the very least construction must be halted, a list of subs and suppliers must be obtained, they must be paid and they must execute recordable lien waivers.

If a MLC has been executed, it can be amended to expressly exclude all the “prior construction activity” from the scope of the MLC.

- How far along is construction?
- Does the borrower have other homestead property?

B. Non homestead property: Your underwriter will decide whether to follow a homestead type of procedure or instead proceed with what you have and rely on the P-8 policy exceptions to protect us.

IV. CONSTRUCTION CLAUSES IN THE OWNER POLICY AND LOAN POLICY

A. Any OP or LP issued on a transaction in which the construction of improvements is immediately contemplated must contain the appropriate P-8 exceptions. The including of these exceptions is mandatory and they cannot be negotiated away.

B. In Texas, title insurance companies do not take the risk of mechanic’s liens during construction. Our premium rate structure is not designed for us to take that type of risk.

C. When an Owner Policy is issued in an amount to include the cost of immediately contemplated improvements, the Policy must contain the following exception in Schedule B:

Any and all liens arising by reason of unpaid bills or claims for work performed or materials furnished in connection with improvements placed, or to be placed, upon the subject land. However, the Company does insure the Insured against loss, if any, sustained by the Insured under this Policy if such liens have been filed with the County Clerk of ___ County, Texas, prior to the date hereof.”

P-8a(1)

D. When a Mortgagee Policy is issued prior to completion of improvements made under a mortgage given in whole, or in part, for the cost of improvements, the policy must contain the following exception under Schedule B:

Any and all liens arising by reason of unpaid bills or claims for work performed or materials furnished in connection with improvements placed, or to be placed, upon the subject land. However, the Company does insure the Insured against
loss, if any, sustained by the Insured under this Policy if such liens have been filed with the County Clerk of ___ County, Texas, prior to the date hereof.”

P-8b(1)

V. COVERAGE AMOUNT ISSUES IN THE OWNER POLICY AND LENDER POLICY

A. When insuring a construction transaction, for either an owner or a lender, we want to be sure that our liability at any one time is limited to the actual amount of money which has been put into the project, as “verified” to us by the parties themselves.

- Who do you trust?

B. When the policy is issued “up front” as it is in a “one time close”, the amount of insurance stated on Schedule A should be the total amount of coverage contemplated upon completion of improvements.

C. When an Owner Policy is issued in an amount to include the cost of immediately contemplated improvements, the Policy must contain the following exception in Schedule B:

... AND THE FOLLOWING "LIABILITY" PARAGRAPH:

"Liability hereunder at the date hereof is limited to $_________. Liability shall increase as contemplated improvements are made, so that any loss payable hereunder shall be limited to said sum plus the amount actually expended by the Insured in improvements at the time the loss occurs. Any expenditures made for improvements, subsequent to the date of this policy, will be deemed made as of the date of this policy. In no event shall the liability of the Company hereunder exceed the face amount of this policy. Nothing contained in this paragraph shall be construed as limiting any exception or any printed provision of this policy."

P-8a(1)

- The value of the land may be included in the initial limitation of liability exception even though no construction has been completed.

D. When a Mortgagee Policy is issued prior to completion of improvements made under a mortgage given in whole, or in part, for the cost of improvements, the policy must contain the following exception under Schedule B:

...
AND THE FOLLOWING "PENDING DISBURSEMENT" PARAGRAPH:

"Pending disbursement of the full proceeds of the loan secured by the lien instrument set forth under Schedule A hereof, this policy insures only to the extent of the amount actually disbursed, but increases as each disbursement is made in good faith and without knowledge of any defects in, or objections to, the title up to the face amount of the policy. Nothing contained in this paragraph shall be construed as limiting any exception under Schedule B, or any printed provision of this policy."

P-8b(2)

E. The exceptions in Paragraph D should also be inserted when an LP is issued following the issuance of an ICB, but prior to the completion of improvements and the acceptance of the improvements by the owner.  P-8b(3)

VI. DOWN DATES ON THE OWNER POLICY DURING CONSTRUCTION

A. At any time during construction, the owner may request that its policy be endorsed to increase the amount of coverage provided and to update the mechanic’s lien coverage.

VIII. USE ONLY IN CONNECTION WITH INCREASE IN COVERAGE SUBSEQUENT TO ISSUANCE OF FORM T-1 OWNER’S TITLE POLICY OR FORM T-1R TEXAS RESIDENTIAL OWNER’S POLICY IN THE MANNER PROVIDED IN RULE P-8.a.

When a Company is called upon to endorse its Owner’s Title Policy to evidence increase in coverage thereunder, and upon compliance with Rule P-9.a.(3), said Company may issue the T-3 Endorsement by inserting the following applicable provisions therein:

A. Said Policy is hereby amended so that its coverage shall relate to the date of this Endorsement instead of the date of the Policy, subject to:

1. The exceptions shown in Schedule B of said Policy and in any prior Endorsement to said Policy,
2. Matters which would be shown by a correct survey and inspection of the premises subsequent to the date of said Policy,
3. Any and all liens arising by reason of unpaid bills or claims for work performed or material furnished in connection with the improvements being placed upon the subject land. The Company does, however, insure the insured against loss, if any, sustained by the insured under the terms of the policy, if any such liens have been filed with the County Clerk of the County in which such property is located prior to the date of this Endorsement except those liens set forth in Schedule B of said Policy or in any prior
Endorsement to said Policy, and except: (Specify or delete the words "and except" immediately preceding.),

4. The following additions to Schedule B of said Policy: (Specify or delete this paragraph ).

B. The coverage under said Policy as of the date hereof is $____________.

VII. DOWN DATES ON THE LENDER POLICY DURING CONSTRUCTION

A. At any time during construction, the lender may request that its policy be endorsed to increase the amount of coverage provided. The lender should provide us with a written statement as to the amount it has advanced to date.

V. USE ONLY IN CONNECTION WITH INTERIM CONSTRUCTION ADVANCES SUBSEQUENT TO ISSUANCE OF FORM T-2 LOAN TITLE POLICY.

When a Company is called upon to endorse a Loan Title Policy at the time of periodic construction advances in the same transaction, and upon compliance with Rule P-9.b.(4), said Company may issue the T-3 Endorsement by inserting the following applicable provisions therein:

A. Said policy is hereby amended so that its coverage shall relate to the date of this Endorsement instead of the date of the policy, subject to:

1. The exceptions shown in Schedule B of said policy and in any prior Endorsement to said policy,
2. Matters which would be shown by a correct survey and inspection of the premises subsequent to the date of said policy,
3. Any and all liens arising by reason of unpaid bills or claims for work performed or material furnished in connection with the improvements being placed upon the subject land: The Company does, however, insure against loss, if any, sustained by the insured under the terms of the policy, if any such liens have been filed with the County Clerk of the County in which such property is located prior to the date of this Endorsement, except those liens set forth in Schedule B of said policy or in any prior Endorsement to said policy, and except: (Specify or delete immediately preceding words "and except",)
4. The following additions to Schedule B of said policy: (Specify or delete this paragraph and include as exceptions only those additional matters which the Company has determined are superior to the lien described in Schedule A, Item 4, of said policy.)
5. The following matters which affect the title to the estate or interest in the land described or referred to in Schedule A of said policy, but Company insures the insured against loss, if any, sustained by the insured under the terms of the policy if such matters are not subordinate to the lien described in Schedule A, Item 4, of said policy: (Specify or delete this paragraph).

The coverage under said policy as of the date hereof is $__________________.

VIII. ENDORsing THE OWNER POLICY UPON COMPLETION OF IMPROVEMENTS – THE RULE

Upon the completion of the improvements on said property, the owner's acceptance thereof, and satisfactory evidence to the Company that all bills for labor and materials have been paid in full, the "Liability" paragraph and the exception in Schedule B set out in "a(1)" of this rule may be eliminated from the policy by the issuance of the promulgated Endorsement form containing the applicable promulgated language covering said elimination.

IX. ENDORsing THE OWNER POLICY UPON COMPLETION OF IMPROVEMENTS – THE FORM

Upon completion of improvements, proof that all bills have been paid, and acceptance of the project by the owner, the title company may endorse the Owner Policy as follows:

II. USE UPON COMPLETION OF IMPROVEMENTS.

Upon the completion of improvements and after compliance with Procedural Rule P-8.a.(2) or b.(2), Procedural Rule P-50, and Rate Rules R-16 and R-29, if applicable, the following language may be inserted into the T-3 Endorsement:

A. In Owner 's Policies - Rule P-8.a.(2) and R-16

1. "Exceptions No.___________________ in said Owner 's Policy are hereby deleted."

2. Only in the event there is a specific request that the exception as to area and boundaries, etc. be amended and when a current, acceptable survey, showing all completed improvements, is furnished to the Company, the following language contained in the applicable subdivision below may be inserted and shown as No. 2 of the T-3 Endorsement form. In the event no amendment is to take place, No. 2 should read "Survey coverage not requested." The types of exception and the correct wording to be inserted are as follows:
a. Area and boundaries exception previously amended -
"The company affirms the amendment of the exception as to area and boundaries of the above numbered policy, such amendment to be effective as of the date of this Endorsement."

b. Area and boundaries exception NOT previously amended -
"Exception as to area and boundaries of the above numbered policy is hereby eliminated save and except any shortages in area."

c. In the event a review of the survey shows additional matters to be excepted from coverage -
"The following exceptions are added to Schedule B of the policy: (List specific exceptions regarding matters shown by the survey)."

3. Only in the event there is a specific request that the T-19.1 Endorsement be issued and when the Company's underwriting requirements have been met, the following language contained in the applicable subdivision below may be inserted and shown as No. 3 of the T-3 Endorsement form. In the event the endorsement is not to be issued [n]or the coverage affirmed, No. 3 should read "T-19.1 not requested." The correct wording to be inserted is as follows:

a. T-19.1 Endorsement previously issued -
"The company affirms the coverage provided in the T-19.1 Endorsement issued in connection with the above numbered policy, such coverage to be effective as of the date of this Endorsement."
"The following subparagraph(s) of this endorsement are deleted: ____________________"

b. T-19.1 Endorsement NOT previously issued -
"T-19.1 Endorsement in the form attached hereto is made a part of the above numbered policy".
"The following subparagraph(s) of this endorsement are deleted: ____________________"

X. ENDORSING THE LENDER POLICY UPON COMPLETION OF IMPROVEMENTS – THE RULE

Upon the completion of the improvements on said property, the owner's acceptance thereof, and satisfactory evidence to the Company that all bills for labor and materials have been paid in full, the exception plus the "Pending
Disbursement" paragraph in "b(1)" above may be eliminated from the policy and mechanic's and materialmen's lien coverage amended by issuance of the promulgated Endorsement form containing the applicable promulgated language covering said elimination and amendment.

P-8b2

XI. ENDORSING THE LENDER POLICY UPON COMPLETION OF IMPROVEMENTS – THE FORM

II. USE UPON COMPLETION OF IMPROVEMENTS.

Upon the completion of improvements and after compliance with Procedural Rule P-8.a.(2) or b.(2), Procedural Rule P-50, and Rate Rules R-16 and R-29, if applicable, the following language may be inserted into the T-3 Endorsement:

B. In Loan Policies - Rule P-8.b.(2)
1. "Exception No. ______________ of Schedule B and the Pending Disbursement Clause in said policy are hereby deleted."
2. "Said policy is hereby amended so that its coverage as to all loss or damage against mechanics' and materialmen's liens shall related to the date of this Endorsement instead of the date of said policy."
3. Only in the event there is a specific request that the exception as to area and boundaries, etc., be amended and when a current, acceptable survey, showing all completed improvements is furnished to the Company, the following language contained in the applicable subdivision below may be inserted and shown as No. 3 of the T-3 Endorsement form. In the event no amendment is to take place, No. 3 should read "No survey coverage requested." The types of exceptions and the correct wording to be inserted are as follows:

A. Area and boundaries exception previously amended -
"The Company affirms the amendment of the exception as to area and boundaries of the above numbered policy, such amendment to be effective as of the date of this Endorsement."

B. Area and boundaries exception NOT previously amended -
"Exception as to area and boundaries of the above numbered policy is hereby eliminated save and except any shortages in the area."

C. In the event a review of the survey shows additional matters to be excepted from coverage -
"The following exceptions are added to Schedule B of the policy: (List specific exceptions regarding matters shown by the survey)."

4. Only in the event there is a specific request that the T-19 Endorsement be issued and when the Company's underwriting
requirements have been met, the following language contained in the applicable subdivision below may be inserted and shown as No. 4 of the T-3 Endorsement form. In the event the endorsement is not to be issued or the coverage affirmed, No. 4 should read "T-19 not requested." The correct wording to be inserted is as follows:

a. T-19 Endorsement previously issued -
"The Company affirms the coverage provided in the T-19 Endorsement issued in connection with the above numbered policy, such coverage to be effective as of the date of this Endorsement."
"The following subparagraph(s) of this endorsement are deleted: ____________________"

b. T-19 Endorsement NOT previously issued -
"T-19 Endorsement in the form attached hereto is made a part of the above numbered policy."
"The following subparagraph(s) of this endorsement are deleted: ____________________"

XII. HOW TO HANDLE CHANGE ORDERS AND ALTERATIONS AND EXTRAS

A. Homesteads: Examine the MLC and determine if this possibility was contemplated by the parties. If so, whatever procedure is stated in the MLC should be required in order to insure. Some are strict in that they require that change orders be executed in writing before the work is done. Others merely require that there be an “agreement” for the work.

Sample clause from a MLC
No alterations shall be made in the work shown or described by the plans and specifications, nor shall any extra work or materials be charged or paid for, unless a separate estimate for such extra work is submitted in writing by Contractor to Owner and agreed to in writing by them before the extra work is started. The additional amount to be paid for all extra work and materials so agreed to and so furnished shall be a part of the indebtedness secured by the lien created by this Contract.

Sample Clauses from an Affidavit Regarding Change Orders
On __________, Contractor and Owner executed that certain Mechanic’s Lien Contract, which is recorded under ______ County Clerk’s File Number _______. Said Contract contains the following provision: “If a Change Order is made to the Construction Contract which increases the Contract Amount, such increase will also be secured by the Mechanic’s Lien.”
Attached hereto and incorporated herein as Exhibits “B” through ____ are copies
of various change orders which were entered into by Contractor and Owner. All
of these change orders were approved by Owner prior to the time any of the
work described in the change orders was commenced, and/or prior to the time
any goods and/or materials described in the change orders were delivered to the
project. The total amount of the change orders is $________________

B. Non homesteads: This is usually not an issue so long as all parties agree on the cost of
the work.

C. In either situation the coverage of the LP issued up front cannot be increased; Texas has
no such endorsement. The lender can either go without coverage for the additional amount
advanced until the loan goes perm or it can take a junior deed of trust for the additional
amount.

XIII. WHEN THE FINAL COST AT PERM EXCEEDS THE INITIAL POLICY COVERAGE

If the additional work or change orders were properly documented those amounts can be
rolled into the final note, deed of trust and policy; this is because they were secured pursuant
to the terms of the original contract.

On a homestead, if the additional work cannot be documented so that it fits within the original
contract then that amount can never be secured by the homestead construction lien. On a
homestead construction project, combining a valid lien with funds not secured by a valid lien
would necessitate that the perm loan be a a home equity loan.

XIV. WHEN MECHANICS’ LIENS ARE RECORDED DURING CONSTRUCTION

A. If they are not paid and released to your satisfaction, you can accept a statutory
indemnity bond under the Property Code (Sect. 53.171 [posted by anyone]) or a payment bond
(Sects 53.202 and 53.236 [posted by the contractor and owner]) under the Property Code.
Remember that none of those bonds will provide protection against the constitutional lien held
by a contractor who had a direct relationship with the property owner.

B. Some underwriters will accept an indemnity agreement from the owner or contractor
backed up by a cash deposit.

Where sufficient indemnity executed by a financial institution regulated by State or
Federal Government, such as a bank, savings and loan association, life insurance
company or surety company is delivered to, and accepted by, the title insurance
company, or where sufficient funds have been deposited with the title insurance
company or its agent to protect against mechanic’s liens by affidavits which are being
contested or disputed; provided the written consent of the Insureds (owner and mortgagee) shall be delivered to the title insurance company and retained in its files; P-11(b)(5)

XV. SURVEY COVERAGE ON CONSTRUCTION TRANSACTIONS

A. The basic rules set out in Procedural Rule P-2 apply.

B. You will often be presented with a vacant land survey. Remember that survey coverage is effective as of the date you give it.

C. Slab or foundation surveys are usually presented upon completion of that stage of construction.

Procedural Rule P-8a(2)

... In addition to the above elimination, if a satisfactory survey made after the completion of improvements is furnished to the Company, survey coverage may be provided as set out in Rules R-16 and P-2, using the promulgated Endorsement form and containing the applicable promulgated language.

Procedural Rule P-8b(2)

... In addition to the above elimination, if a satisfactory survey made after the completion of improvements is furnished to the Company, survey coverage may be provided as set out in Rules R-16 and P-2, using the promulgated Endorsement form and containing the applicable promulgated language.

D. How do you update survey coverage during construction?

XVI. PREMIUMS ON THE OWNER POLICY AND LENDER POLICY

A. Down date endorsements are $50.00 each. P-9a(3), R-15, P-9b(4), R-11C.

B. There is no promulgated rate for a “completion” endorsement.

XVII. CAN A HOME EQUITY LIEN BE USED FOR CONSTRUCTION

Yes. Since the HEL is a valid lien against a homestead there is no need for a MLC. However, the P-8b exceptions must still be placed in the policy.
XVIII. ICB – MORTGAGEE TITLE BINDER ON INTERIM CONSTRUCTION LOAN

A. The ICB is essentially a commitment; it is not a title policy. It merely obligates the issuing company to issue a LP at a later date.

B. P-16 is the governing rule.

P-16. Loan Title Policy Binder on Interim Construction Loan (Interim Binder)
The Loan Title Policy Binder on Interim Construction Loan (Interim Binder) shall be used only with respect to interim construction loans in which it is contemplated in good faith that the Company issuing the Interim binder shall be asked to issue its Loan Policy or Policies; issued simultaneously with Owner 's Policy or Policies of Title Insurance or at the basic rate, on a permanent loan or loans covering the identical property (in one or more parcels) when improvements are completed, but which permanent loan or loans may be made by a mortgagee or mortgagees other than the mortgagee named in the Interim binder. The use of such Interim Binder shall be limited solely to interim construction loans and pledges of the interim construction notes and liens wherein: (i) the obligor on the indebtedness is an original contractor who is also the record owner of the land upon which improvements are to be constructed; and, (ii) the security document for the indebtedness is not in the form of a Mechanic's Lien Contract.
Construction loans may include sums advanced for acquisition of land and/or to take up, renew or satisfy prior existing liens on land upon which construction is to occur.
Interim Binder shall not be issued on vacant lots or tracts, except in connection with the immediate construction of improvements thereon, nor shall such Interim Binder be issued after completion of improvements to which it relates, but this does not prohibit the issuance of Extensions after completion of improvements. In all cases not specifically enumerated in this rule, a Loan Policy shall be used.
The Company shall be required to show all subordinate liens in Schedule B-Part 2 of the Interim Binder, but a statement may be made therein that such lien(s) is subordinate.

C. Although the true purpose of the ICB is to facilitate the construction of residential properties by a home builder, its use is not limited to those situations.

D. The obligor on the debt, the contractor on the project, and the land owner must be the same person or entity.

1. If X is the borrower and contractor, and title to the land is held by X and Y, an ICB may not be issued.
E. The lien document must not be a mechanic’s lien contract.

1. The intent is to exclude the ‘custom home’ transaction from the scope of an ICB.

F. An ICB can be issued on a residential construction project, so long as the requirements of P-16 are satisfied. ICBs are not limited to commercial projects.

G. The amount of the ICB may include the cost of land acquisition, including the refinancing of existing purchase money liens.

H. An ICB may not be issued on vacant land, unless the construction of improvements is immediately contemplated.

I. An ICB may not be issued after construction is complete. An ICB which was issued prior to or during construction may be extended after construction is complete.

J. An ICB may not be issued if the contemplated construction is for infrastructure, such as curbs, gutters, streets and utilities. State Board of Insurance Bulletin No. 136, May 2, 1972.

TO: ALL TITLE INSURANCE COMPANIES LICENSED TO DO BUSINESS IN THE STATE OF TEXAS AND ALL AGENTS THEREOF:
RE: PROCEDURAL RULE T-16 - MORTGAGEE TITLE POLICYBinder ON INTERIM CONSTRUCTION LOAN

Rule P-16 reads in part as follows:

"The Mortgagee Title Policy Binder on Interim Construction Loan (Interim Binder) shall be used only with respect to Interim Construction Loans in which it is contemplated in good faith that the company issuing Interim Binder shall be asked to issue its Mortgagee Policy on a permanent loan covering the identical property when improvements are completed."

We have been advised that some companies are issuing Interim Binders where the loan is merely for developing a sub-division, or in other words, a developer of a proposed sub-division secures a loan from a bank or other lender for the purpose of the site development, such as curb, gutter, streets and utilities.

We have been asked if a title insurance company would be permitted to issue a binder under such circumstances, or must a Mortgagee Title Policy with the Completion of Improvements Exception be issued.
We are of the opinion that a Mortgagee Title Policy with the Completion of Improvements Exception provided by Rule P-8 should be issued in these instances.

/s/ Ira M. Goodrich
Ira M. Goodrich
Director of Title Insurance

XIX. THE ICB – THE TITLE COMPANY’S OBLIGATION

“The Company commits to issue a Loan Policy of Insurance to the Proposed Insured as of the Date and Time and in the Amount shown on SCHEDULE A hereof and insuring the Lien described in SCHEDULE A hereof, subject to the exceptions shown in SCHEDULE B hereof and pursuant to the requirements herein made and in the form then promulgated by the Commissioner of Insurance of the State of Texas.”

XX. THE ICB – THE SCHEDULES

SCHEDULE A

GF No. ________________________ AMOUNT: Construction Binder Number:
Date and Time of Binder ________________________ at ________ a.m. / p.m.
Proposed Insured:
Proposed Borrower:
Recorded title at the date hereof appears vested in:
DESCRIPTION OF THE LIEN (must have been filed for record):
LEGAL DESCRIPTION of the property referred to in this Binder

Schedule B – Part I -- Sections 1 (restrictions), 2 (surveys), and 3 (taxes) are the same as on the LP.

Schedule B – Part I -- Section 4:

In the event a Loan Policy is issued prior to the improvements having been completed and accepted by the owner, and before satisfactory evidence that all outstanding bills have been paid or satisfied has been furnished to the Company issuing said Loan Policy, an additional exception will be inserted under Schedule B of said Loan Policy, excepting to "Mechanic's and materialmen's liens," as well as "pending disbursements" (if applicable), the wording of said exception being as promulgated by the Texas Department of Insurance and specifically set out as
Rule P8b3 in the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas.

Schedule B – Part 1 -- Section 5 (Insert here all other specific exceptions as to liens, easements, outstanding mineral and royalty interests, etc., which will be shown as exceptions under SCHEDULE B of the Loan Policy.)

Schedule B – Part 2

Showing matters that affect the title to the estate or interest in the land described or referred to in SCHEDULE A, but the Company commits to insure the Proposed Insured in the Loan Policy against loss, if any, sustained by said Insured under the Policy if said matters are not subordinate to the lien described in SCHEDULE A.

- . . . (W)hen issuing an ICB, the Company shall be required to show all subordinate liens in Schedule B – Part 2 of said binder, but a statement may be made therein that such lien(s) is subordinate. P-11b.(8).

SCHEDULE C

Showing requirements to be complied with; defects and objections to be removed or eliminated, and liens and encumbrances to be satisfied and discharged of record before the policy will be issued without exceptions thereto:

1. Evidence satisfactory to the Company that:
   (a) No materials have been furnished or any labor performed in connection with the construction contemplated here under prior to the execution, acknowledgment and delivery of the lien instrument described under SCHEDULE A hereof, if the land described under SCHEDULE A forms any part of the homestead of the owner. (This item may be deleted if satisfactory evidence is furnished before binder is issued.)
   (b) Improvements have been completed and accepted by the owner.
   (c) All bills for labor and materials have been paid in full and no mechanic's, laborer's or materialman's liens have attached.
   (d) Restrictions or restrictive covenants have not been violated.

2. Payment of the full consideration to, or for the account of, the grantors or mortgagors.

3. Payment of all standby fees, taxes, charges and assessments levied or assessed against the subject estate or interest, which are currently due and payable.

4. Satisfactory evidence of legal right of access to and from the land. 5. (Here show outstanding liens or other matters which must be disposed of at or before issuance of Policy.)
XXI. THE ICB – CHANGES TO THE PROMULGATED FORM

- Deletion of the rollback tax exception. The same rules apply to an ICB as to the LP.
- The “not yet due and payable” coverage. The same rules apply to an ICB as to a LP.
- The survey exception may not be amended. P-2 applies only to an OP and a LP.

XXII. THE ICB – WHO IS COVERED?

- The “Proposed Insured” should be only the named lender. It is impermissible to add ‘ISAOA’ language or the phrase authorized by P-7. ICBs are expressly excluded from the reach of P-7.

P-7. Name of Insured on Loan Policy of Title Insurance or Proposed Insured on Commitment for Loan Policy of Title Insurance

A. When the Department of Housing and Urban Development, the Federal Housing Administration or the Veterans' Administration, or as their names may be changed from time to time, is guaranteeing the payment of loans, or portions thereof, the Secretary of Housing and Urban Development or the Administrator of Veterans' Affairs, or as their names may be changed from time to time, may be included as one of the Insureds.

B. At the request of the proposed insured, the following may be included when describing the Proposed Insured (in the case of a Commitment) or Name of Insured (in the case of a Loan Policy):
" , and each successor in ownership of the indebtedness secured by the insured mortgage, except a successor who is an obligor under the provisions of Section 12(c) of the Conditions"

C. No words may be added to, deleted from or substituted for the language allowed by Section B of this rule. Section B language may not be added by or to any endorsement nor may it be inserted in an Owner's Policy of Title Insurance or a Loan Title Policy Binder on Interim Construction Loan.
XXIII. THE ICB – DOWN DATE ENDORSEMENTS

From the “Endorsement Instructions in the Forms section of the Basic Manual:

V. USE ONLY IN CONNECTION WITH INTERIM CONSTRUCTION ADVANCES SUBSEQUENT TO ISSUANCE OF FORM T-2 LOAN TITLE POLICY.
When a Company is called upon to endorse a Loan Title Policy at the time of periodic construction advances in the same transaction, and upon compliance with Rule P-9.b.(4), said Company may issue the T-3 Endorsement by inserting the following applicable provisions therein:

A. Said policy is hereby amended so that its coverage shall relate to the date of this Endorsement instead of the date of the policy, subject to:
   1. The exceptions shown in Schedule B of said policy and in any prior Endorsement to said policy,
   2. Matters which would be shown by a correct survey and inspection of the premises subsequent to the date of said policy,
   3. Any and all liens arising by reason of unpaid bills or claims for work performed or material furnished in connection with the improvements being placed upon the subject land: The Company does, however, insure against loss, if any, sustained by the insured under the terms of the policy, if any such liens have been filed with the County Clerk of the County in which such property is located prior to the date of this Endorsement, except those liens set forth in Schedule B of said policy or in any prior Endorsement to said policy, and except: (Specify or delete immediately preceding words "and except").
   4. The following additions to Schedule B of said policy: (Specify or delete this paragraph and include as exceptions only those additional matters which the Company has determined are superior to the lien described in Schedule A, Item 4, of said policy.),
   5. The following matters which affect the title to the estate or interest in the land described or referred to in Schedule A of said policy, but Company insures the insured against loss, if any, sustained by the insured under the terms of the policy if such matters are not subordinate to the lien described in Schedule A, Item 4, of said policy: (Specify or delete this paragraph).

B. The coverage under said policy as of the date hereof is $______________.
XIX. THE ICB – PREMIUMS AND CREDITS

A. The premium for the ICB is the basic minimum, which today is $238.00.

B. The ICB is good for a year. It may be extended up to 6 times for 6 months each, each extension is $25.00. R-13A. Extending the ICB does not require a down date.

   I. USE TO EXTEND LOAN TITLE POLICY BINDER ON INTERIM CONSTRUCTION LOAN.
   When the Company is called upon to extend the expiration date of a Loan Title Policy Binder on Interim Construction Loan, and after complying with Rules R-13 and P-16, it shall issue the T-3 Endorsement inserting therein:
   "The expiration date of said Interim Construction Binder is extended for a period of six months from the expiration date of the original Binder, or the expiration date of the last T-3 Endorsement extending said Binder; but in no event beyond thirty-six months from the expiration date of the Binder."

C. Down date endorsements are $50.00 each. R-11(c); P-9.b(4).

D. If an LP insuring a loan which fully renews, takes up, or extends the lien covered by the ICB is issued within one year from the issuance of the ICB, a credit of one-half the ICB premium shall be allowed against the premium of the LP. R-13B(1)

E. If an OP is issued on the same property as was covered by an ICB within a year from the issuance of the ICB, a credit of one-half of the ICB premium shall be allowed against the premium of the OP; provided, the lien covered by the ICB is released prior to or simultaneous with the sale. If the ICB covered multiple tracts, the credit shall be applied only to the first OP issued.

F. The credits in D and E apply only if the ICB covered property which was being improved for 1 to 4 family occupancy.

~
ADDENDUM
STATE OF TEXAS §
COUNTY OF __________ §

KNOW ALL MEN BY THESE PRESENTS:

AFFIDAVIT REGARDING ALTERATIONS AND EXTRA WORK

Our names are ______ (“Contractor”) and ______________ (“Owner” whether one or more). We are each over the age of eighteen (18) years and we are each competent to make this Affidavit. We each have personal knowledge of the factual statements made herein, and they are true and correct.

This Affidavit is made concerning real property located in ______________ County, Texas, which is more fully described as:

On ____________ Contractor and Owner executed that certain Contract for Improvements With Deed of Trust and Power of Sale, which is recorded under Clerk’s File Number ____ in the Real Property Records of ____ County, Texas. Said Contract contains the following provision:

No alterations shall be made in the work shown or described by the plans and specifications, nor shall any extra work or materials be charged or paid for, unless a separate estimate for such extra work is submitted in writing by Contractor to Owner and agreed to in writing by them before the extra work is started. The additional amount to be paid for all extra work and materials so agreed to and so furnished shall be a part of the indebtedness secured by the lien created by this Contract.

Attached hereto and incorporated herein as Exhibits “A” through ____ are copies of various estimates for extra work which were submitted by Contractor and agreed to in writing by Owner. All of these estimates were approved by Owner prior to the time any of the work described in the estimates was commenced, and/or prior to the time any goods and/or materials described in the estimates were delivered to the project.

This Affidavit is made, in part, as an inducement to the lender to make a loan to Owner to finance construction on the Property.

We and each of us understand that WFG National Title Insurance Company (“Underwriter”) is relying on the statements made in this Affidavit. We and each of us agree to indemnify and hold harmless Underwriter for all expense, costs, liability and attorneys fees either of them may incur as a result of relying on this Affidavit. We and each of us understand that Underwriter would not proceed to close the contemplated transaction and would not issue title insurance policies were it not for our executing of this Affidavit.

Executed this the _____ day of ______________, 20__

[Signatures and acknowledgments of parties]
STATE OF TEXAS §
COUNTY OF ______________ §

KNOW ALL MEN BY THESE PRESENTS:

AFFIDAVIT REGARDING CHANGE ORDERS

Our names are __________ (Contractor) and __________ (Owner whether one or more). We are each over the age of eighteen (18) years and we are each competent to make this Affidavit. We each have personal knowledge of the factual statements made herein, and they are true and correct.

This Affidavit is made concerning real property located in _______ County, Texas, which is more fully described on Exhibit “A”, which is attached hereto and incorporated herein.

On __________, Contractor and Owner executed that certain Mechanic’s Lien Contract, which is recorded under _____ County Clerk’s File Number ________, _____ County, Texas. Said Contract contains the following provision: “If a Change Order is made to the Construction Contract which increases the Contract Amount, such increase will also be secured by the Mechanic’s Lien.”

Attached hereto and incorporated herein as Exhibits “B” through ____ are copies of various change orders which were entered into by Contractor and Owner. All of these change orders were approved by Owner prior to the time any of the work described in the change orders was commenced, and/or prior to the time any goods and/or materials described in the change orders were delivered to the project. The total amount of the change orders is $__________________

This Affidavit is made, in part, as an inducement to the permanent lender to make a permanent loan to Owner to finance construction on the Property.

We and each of us understand that Friendly Title (Title Agent) and WFG National Title Insurance Company (Underwriter) are relying on the statements made in this Affidavit. We and each of us agree to indemnify and hold harmless Title Agent and Underwriter for all costs, liability and attorneys fees either of them may incur as a result of relying on this Affidavit. We and each of us understand that Title Agent and Underwriter would not proceed to close the contemplated transaction and would not issue title insurance policies were it not for our executing of this Affidavit.

Executed this the _____ day of ______________, 20.

[Signatures and acknowledgments of parties]
AFFIDAVIT – PRIOR CONSTRUCTION ACTIVITY
NON HOMESTEAD PROPERTY

STATE OF TEXAS §
§
COUNTY OF §
§

1. We are ________________________________ (hereinafter called “Contractor”), and ________________________________ (hereinafter called “Owner[s]”).

2. We are each over the age of eighteen (18) years and are otherwise qualified to make this Affidavit.

3. Contractor has commenced construction on a non-residential project on the following described real property (“Property”):

4. Prior to the execution of this Affidavit certain construction work (hereinafter called the “Prior Construction Activity”) was commenced on the Property. The Prior Construction Activity was commenced on the _____ day of ________, 20__, and was stopped on the _____ day of ________, 20__. The Prior Construction Activity can generally be described as follows:

5. In connection with the Prior Construction Activity, labor and/or materials were provided only by the following persons/entities:

   Name: ___________________________________________
   Address: _________________________________________
   Telephone number: (___) ____________
   Type of work done: ____________________________
   Type of materials furnished: ______________________
   Amount charged: $___________

   Name: ___________________________________________
   Address: _________________________________________
   Telephone number: (___) ____________
   Type of work done: ____________________________
   Type of materials furnished: ______________________
   Amount charged: $___________
Name: __________________________________________________
Address: _______________________________________________
Telephone number: (___) ________________
Type of work done: _________________________________________
Type of materials furnished: _________________________________
Amount charged: $___________

Name: __________________________________________________
Address: _______________________________________________
Telephone number: (___) ________________
Type of work done: _________________________________________
Type of materials furnished: _________________________________
Amount charged: $___________

(If necessary, a continuation page is attached hereto and incorporated herein as Exhibit ____ ) (Insert an Exhibit letter or insert “NA”)

6. Contractor and Owner(s) agree and represent that all persons and entities listed herein as having worked on the Prior Construction Activity will be paid in full and that Lien Waivers will be obtained from each. Contractor and Owner(s) also agree and represent that a Lien Waiver will be obtained from Contractor regarding any work done or materials supplied or services rendered up to and including the day the Prior Construction Activity was stopped.

7. This Affidavit is made, in part, as an inducement to _____________ (“Lender”) to make a loan to Contractor and/or Owner(s) to finance construction on the Property. No part of the loan proceeds will be used to pay for the Prior Construction Activity.

8. We and each of us understand that Friendly Title (Title Agent) and WFG National Title Insurance Company (Underwriter) are relying on the statements made in this Affidavit. We and each of us agree to indemnify and hold harmless Title Agent and Underwriter for all costs, liability and attorney’s fees either of them may incur as a result of relying on this Affidavit. We and each of us understand that Title Agent and Underwriter would not proceed to close the contemplated transaction and would not issue title insurance policies were it not for our executing of this Affidavit.

Executed this the ____ day of ____________, 20__.

(Signatures and acknowledgements of parties)
AFFIDAVIT REGARDING PRIOR CONSTRUCTION ACTIVITY

STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF

1. We are ______________________ (hereinafter called “Contractor”), and ______________________ (hereinafter called “Owner[s]”).

2. We are each over the age of eighteen (18) years and are otherwise qualified to make this Affidavit.

3. Contractor and Owner(s) intend to execute a Builder's and Mechanic's Lien Contract regarding construction of a residence on the following described real property “Property”:

4. Prior to the execution of the Builder’s and Mechanics' Lien Contract between Contractor and Owner(s), certain construction work (hereinafter called the “Prior Construction Activity”) was commenced on the Property. The Prior Construction Activity was commenced on the _____ day of _______, 20__ and was stopped on the _____ day of _______, 20__. The Prior Construction Activity can generally be described as follows:

5. In connection with the Prior Construction Activity, labor and/or material were provided only by the following persons/entities:

Name:
Address:
Telephone number:
Type of work done:
Type of materials furnished:
Amount charged: $

Name:
Address:
Telephone number:
Type of work done:
Type of materials furnished:
Amount charged: $
Name: 
Address: 
Telephone number: 
Type of work done: 
Type of materials furnished: 
Amount charged: $

Name: 
Address: 
Telephone number: 
Type of work done: 
Type of materials furnished: 
Amount charged: $

(If necessary, a continuation page is attached hereto and incorporated herein as Exhibit ___)

6. Contractor and Owner(s) agree and represent that all persons and entities listed herein as having worked on the Prior Construction Activity will be paid in full and that Lien Waivers will be obtained from each. Contractor and Owner(s) also agree and represent that a Lien Waiver will be obtained from Contractor regarding any work done or materials supplied or services rendered up to and including the day the Prior Construction Activity was stopped. Any contracts regarding construction on the Property between the Contractor and any persons or entitles listed herein have been terminated. Contractor will not enter into any contracts with any of the persons or entities listed herein regarding the Property until the Contractor and Owner(s) have executed a Builders and Mechanic's Lien Contract.

7. Contractor and Owner(s) agree and represent that no aspect of the Prior Construction Activity will be included in the contemplated Builder's and Mechanic's Lien Contract.

8. This Affidavit is made, in part, as an inducement to ______________ (“Lender”) to make a loan to Contractor and/or to Owner(s) to finance construction on the Property. Funds from the loan will be used only to satisfy costs related to the construction described in the Builders and Mechanic's Lien Contract. No part of the loan proceeds will be used to pay for the Prior Construction Activity.

9. We and each of us understand that Friendly Title (Title Agent) and WFG National Title Insurance Company (Underwriter) are relying on the statements made in this Affidavit. We and each of us agree to indemnify and hold harmless the Title Agent and Underwriter for all costs, liability and attorney’s fees either of them may incur as a result of relying on this Affidavit. We and each of us understand that Title Agent and Underwriter would not proceed to close the contemplated transaction and would not issue title insurance policies were it not for our executing of this Affidavit.

(Signatures and acknowledgments of parties)
What qualifies as a construction transaction?

A. When an Owner Policy (OP) is issued in an amount which includes the cost of immediately contemplated improvements.

B. When a Loan Policy (LP) is issued prior to completion of improvements made under a mortgage given in whole or in part for the cost of improvements.

C. Whenever you are issuing an Interim Construction Binder (ICB).
What documentation should you have to close?

- Homestead construction: A mechanic’s lien contract must be signed by both spouses. You need the original MLC or a file stamped copy showing that it has already been recorded.

- The MLC is usually assigned to the lender (sometimes in the MLC itself); the borrower signs the note and deed of trust to the lender, and the deed to trust renews and extends the MLC.
Non homestead construction: You will need a lien instrument (construction contract, construction agreement, etc.)

The lien must be created in favor of the insured or transferred to the insured.

Has Construction Commenced?

You need assurance that construction has not commenced. Who can you trust? This is a more important issue in homestead construction because it goes to the validity of the lien and not just the priority of the lien.
Homestead construction: At the very least construction must be halted, a list of subs and suppliers must be obtained, they must be paid and they must execute recordable lien waivers. If a MLC has been executed, it can be amended to expressly excludes all the “prior construction activity” from the scope of the MLC.

- How far along is construction?
- Does the borrower have other homestead property?
Non homestead property: Your underwriter will decide whether to follow a homestead type of procedure or instead proceed with what you have and rely on the P-8 policy exceptions to protect us.


Construction Clauses in the Owner and Loan Policy

Any OP or LP issued on a transaction in which the construction of improvements is immediately contemplated must contain the appropriate P-8 exceptions. The including of these exceptions is mandatory and they cannot be negotiated away.

In Texas, title insurance companies do not take the risk of mechanic’s liens during construction. Our premium rate structure is not designed for us to take on that risk.
The Mandatory Mechanics’ Lien Exception

Any and all liens arising by reason of unpaid bills or claims for work performed or materials furnished in connection with improvements placed, or to be placed, upon the subject land. However, the Company does insure the Insured against loss, if any, sustained by the Insured under this Policy if such liens have been filed with the County Clerk of ___ County, Texas, prior to the date hereof.”

P-8a(1); P-8b(1)

Coverage Amounts of the Policies

When insuring a construction transaction, for either an owner or a lender, we want to be sure that our liability at any one time is limited to the actual amount of money which has been put into the project, as “verified” to us by the parties themselves.

Who do you trust?
When the policy is issued “up front” as it is in a “one time close”, the amount of insurance stated on Schedule A should be the total amount of coverage contemplated upon completion of improvements.

Owner Policy, Limitation of Liability

"Liability hereunder at the date hereof is limited to $_________. Liability shall increase as contemplated improvements are made, so that any loss payable hereunder shall be limited to said sum plus the amount actually expended by the Insured in improvements at the time the loss occurs. Any expenditures made for improvements, subsequent to the date of this policy, will be deemed made as of the date of this policy. (text omitted) P-8a(1)
Loan Policy, Pending Disbursements

"Pending disbursement of the full proceeds of the loan secured by the lien instrument set forth under Schedule A hereof, this policy insures only to the extent of the amount actually disbursed, but increases as each disbursement is made in good faith and without knowledge of any defects in, or objections to, the title up to the face amount of the policy. (text omitted)

Note the absence of a blank for an amount.

Down Dates, Owner Policy

- When a Company is called upon to endorse its Owner Title Policy to evidence increase in coverage thereunder, and upon compliance with Rule P-9.a.(3), said Company may issue the T-3 Endorsement by inserting the following applicable provisions therein:
Down Date Form

A. Said Policy is hereby amended so that its coverage shall relate to the date of this Endorsement instead of the date of the Policy, subject to:

1. The exceptions shown in Schedule B of said Policy and in any prior Endorsement to said Policy,

2. Matters which would be shown by a correct survey and inspection of the premises subsequent to the date of said Policy,

3. Any and all liens arising by reason of unpaid bills or claims for work performed or material furnished in connection with the improvements being placed upon the subject land. The Company does, however, insure the insured against loss, if any, sustained by the insured under the terms of the policy, if any such liens have been filed with the County Clerk of the County in which such property is located prior to the date of this Endorsement except those liens set forth in Schedule B of said Policy or in any prior Endorsement to said Policy, and except: (Specify or delete the words "and except" immediately preceding.).
4. The following *additions* to Schedule B of said Policy: (Specify or delete this paragraph.).

B. The coverage under said Policy as of the date hereof is $____________.
Down Date Form

A. Said policy is hereby amended so that its coverage shall relate to the date of this Endorsement instead of the date of the policy, subject to:

1. The exceptions shown in Schedule B of said policy and in any prior Endorsement to said policy,

2. Matters which would be shown by a correct survey and inspection of the premises subsequent to the date of said policy,

3. Any and all liens arising by reason of unpaid bills or claims for work performed or material furnished in connection with the improvements being placed upon the subject land: The Company does, however, insure against loss, if any, sustained by the insured under the terms of the policy, if any such liens have been filed with the County Clerk of the County in which such property is located prior to the date of this Endorsement, except those liens set forth in Schedule B of said policy or in any prior Endorsement to said policy, and except: (Specify or delete immediately preceding words "and except",),
4. The following additions to Schedule B of said policy: (Specify or delete this paragraph and include as exceptions only those additional matters which the Company has determined are superior to the lien described in Schedule A, Item 4, of said policy.),

5. The following matters which affect the title to the estate or interest in the land described or referred to in Schedule A of said policy, but Company insures the insured against loss, if any, sustained by the insured under the terms of the policy if such matters are not subordinate to the lien described in Schedule A, Item 4, of said policy: (Specify or delete this paragraph).

B. The coverage under said policy as of the date hereof is $___________.

Now there is a blank to be filled in.
Owner Policy, Completion of Improvements

Upon the completion of the improvements on said property, the owner's acceptance thereof, and satisfactory evidence to the Company that all bills for labor and materials have been paid in full, the "Liability" paragraph and the exception in Schedule B set out in "a(1)" of this rule [the mechanics’ lien exception] may be eliminated from the policy by the issuance of the promulgated Endorsement form containing the applicable promulgated language covering said elimination.

P-8a(2)

Loan Policy, Completion of Improvements

Upon the completion of the improvements on said property, the owner's acceptance thereof, and satisfactory evidence to the Company that all bills for labor and materials have been paid in full, the exception plus the "Pending Disbursement" paragraph in "b(1)" above may be eliminated from the policy and mechanic's and materialmen's lien coverage amended by issuance of the promulgated Endorsement form containing the applicable promulgated language covering said elimination and amendment.  P-8b(2)
Completion Endorsement Form

The Completion Endorsement form is found in the Endorsement Instructions section of the Basic Manual. Section II, A and B.

Change Orders and Alterations and Extras

Usually a bigger problem on homesteads.

Examine the MLC and determine if this contingency was contemplated by the parties. If so, whatever procedure is stated in the MLC should be required in order to insure the additional amounts.
Sample Clause From a MLC

No alterations shall be made in the work shown or described by the plans and specifications, nor shall any extra work or materials be charged or paid for, unless a separate estimate for such extra work is submitted in writing by Contractor to Owner and agreed to in writing by them before the extra work is started. The additional amount to be paid for all extra work and materials so agreed to and so furnished shall be a part of the indebtedness secured by the lien created by this Contract.

The Final Cost at Perm Exceeds the Policy Coverage

If the additional work or change orders were properly documented those amounts can be rolled into the final note, deed of trust and LP.

See R-18 regarding the premium.
The coverage of the LP issued up front cannot be increased; Texas has no such endorsement.

The lender can either go without coverage for the additional amount advanced during construction until the loan goes perm or it can take a junior deed of trust for the additional amount.

Mechanics’ Liens Recorded During Construction

Most underwriters will not go behind the lien; if its of record it will be presumed valid.

Statutory Indemnity Bond
Property Code, Sect. 53.121

Payment Bond
Property Code, Sects. 53.202 and 53.236.
   Protection against constitutional liens?

Cash deposit and indemnity. P-11(b)(5)
Survey Coverage During Construction

The basics of P-2 apply.

You will probably begin with a vacant land survey. Survey coverage is effective on the date you give it.

Slab or foundation surveys. Can you update survey coverage at that point before construction progresses?

Survey Coverage Upon Completion

... if a satisfactory survey made after the completion of improvements is furnished to the Company, survey coverage may be provided as set out in Rules R-16 and P-2, using the promulgated Endorsement form and containing the applicable promulgated language.

- P-8a(2) and P-8b(2)
All Policies, Survey Coverage at Completion

The types of exception and the correct wording to be inserted are as follows:

3a. **Area and boundaries exception** previously amended
"The company affirms the amendment of the exception as to area and boundaries of the above numbered policy, such amendment to be effective as of the date of this Endorsement."

3b. **Area and boundaries exception** NOT previously amended
"Exception as to area and boundaries of the above numbered policy is hereby eliminated save and except any shortages in area."

3c. In the event a review of the survey shows additional matters to be excepted from coverage –

"The following exceptions are added to Schedule B of the policy: (List specific exceptions regarding matters shown by the survey)."
T-19.1 at Completion

The correct wording to be inserted is as follows:

3a. **T-19.1 Endorsement previously issued** -
"The company **affirms** the coverage provided in the T-19.1 Endorsement issued in connection with the above numbered policy, such coverage to be effective as of the date of this Endorsement."

"The following subparagraph(s) of this endorsement are deleted:

______________________________"

3b. **T-19.1 Endorsement NOT previously issued** -
"T-19.1 Endorsement in the form attached hereto is made a part of the above numbered policy".
"The following subparagraph(s) of this endorsement are deleted:

______________________________"

In the event the endorsement is not to be issued or the coverage affirmed, No. 3 should read "**T-19.1 not requested.**"
T-19 at Completion

The correct wording to be inserted is as follows:

4a. **T-19 Endorsement previously issued** -

"The Company affirms the coverage provided in the T-19 Endorsement issued in connection with the above numbered policy, such coverage to be effective as of the date of this Endorsement."

"The following subparagraph(s) of this endorsement are deleted: ___________________

4b. **T-19 Endorsement NOT previously issued** -

"T-19 Endorsement in the form attached hereto is made a part of the above numbered policy."

"The following subparagraph(s) of this endorsement are deleted: ___________________

In the event the endorsement is not to be issued or the coverage affirmed, No. 4 should read "**T-19 not requested.**"