

Underwriting Bulletin: UNTX-2024-003

DATE: FEBRUARY 15, 2024
TO: TEXAS AGENTS
FROM: DAVID HAYS, GENERAL COUNSEL

RE: USE OF P-5.1. EXCEPTION OR EXCLUSION REGARDING MINERALS (More commonly referred to as the “GENERAL MINERAL EXCEPTION or GME”).

As a result of recent underwriting bulletins issued by other underwriters, we have received requests to clarify and/or restate FNTI's position regarding use of the General Mineral Exception (“GME”).

Effective January 3, 2014, the Texas Title Insurance Basic Manual was amended to include the following Procedural Rule:

P-5.1. Exception or Exclusion Regarding Minerals

A. *As used by this rule, minerals means coal, lignite, oil, gas and other minerals in, under and that may be produced from the Land, together with all rights, privileges, and immunities relating thereto. The Policy is not an abstract of title nor does a Company have an obligation to determine the ownership of any mineral interest. A Company may insert into a Policy or any other title insuring form an exception or an exclusion for minerals as provided below:*

1. *On Schedule A, Item 2:*

"subject to, and the Company does not insure title to, and excepts from the description of the Land, coal, lignite, oil, gas and other minerals in, under and that may be produced from the Land, together with all rights, privileges, and immunities relating thereto."; or

2. *On Schedule B:*

"All leases, grants, exceptions or reservations of coal, lignite, oil, gas and other minerals, together with all rights, privileges, and immunities relating thereto, appearing in the Public Records whether listed in Schedule B or not. There may be leases, grants, exceptions or reservations of mineral interest that are not listed."

B. *When the language described in either A.1 or A.2 above is inserted, the Company upon request by the insured and if it meets the Company's underwriting standards may issue one or more of the applicable endorsements as provided in Procedural Rule P-50.1.*

Requirements:

1. The GME should be listed as a Schedule B Exception on all commitments and policies **unless** removal of the GME is requested by the proposed insured AND has been approved by the underwriter.
2. The GME **should not** be used simultaneously with the inclusion of specific Schedule B exceptions for recorded leases, grants, exceptions or reservations of coal, lignite, oil, gas and other minerals unless a customer has specifically requested that information be included in addition to the GME.

3. In the event a proposed insured requests removal of the GME, the agent must conduct an exam back to 1900 in accordance with prior bulletins. <https://fnti.com/download/bulletin-untx-2017-001-title-search-exam-guidelines/?wpdmdl=1116&refresh=65cd2ccf4e9ff1707945167> In the alternative, the customer can engage a landman to conduct a mineral search back to sovereignty and submit same to underwriting for review.
4. In addition to general search and exam requirements, the agents should review the Texas Railroad Commission maps for active lines and wells located on the subject property. <https://www.rrc.texas.gov/resource-center/research/gis-viewer/>
5. In the event the agent is unable to comply with the general search and exam requirements, please contact underwriting counsel for approval prior to removal of the GME.

Additionally, while the GME may be accepted by a proposed insured, it should be noted that the title agent, if requested to issue any one or more of the applicable endorsements as provided by Procedural Rule P-50.1, may be required to review all recorded leases, grants, exceptions or reservations of coal, lignite, oil, gas and other minerals. And, as may be the case, particularly in commercial transactions, the agent may be requested to provide all such recordings to a proposed insured, or proposed insured counsel, notwithstanding the use of the GME in lieu of specific Schedule B exceptions.

Finally, title agents should note that Procedural Rule P-5.1 was specifically approved and adopted as an exception to the rule set forth in Procedural Rule P-5, which states that a Schedule B Exception "... shall not be general in its terms." Procedural Rule P-5.1 states that in the case of "minerals" as defined therein, a general exception **is authorized** in the promulgated format set forth in the rule. In the event a subsequent title agent chooses to include in its commitment, itemized Schedule B Exceptions for minerals, said inclusion of the itemized Schedule B Exceptions in that title agent's Commitment are not indicative of any error in the FNTI policy issued with only the GME.

As always, please contact underwriting counsel with any additional questions.

This Underwriting Bulletin becomes a part of the principles and practices with which you are to comply under the terms of your Underwriting Agreement with First National Title Insurance Company. Should the content of this bulletin address the closing and escrow function, this information should be considered a directive and part of the principles and practices if non-compliance would result in liability to FNTI under either the insured closing service letter or policy of title insurance notwithstanding that the Underwriting Agreement does not include the closing and escrow functions of your agency.