



## New 3-5-1 Regulations take effect May 1, 2010

### Changes to rules will affect title insurance services across the state

Title insurance is already a highly regulated industry, but it will become even more so once the new version of Colorado Division of Insurance Regulation 3-5-1 takes effect on May 1, 2010.

The revised regulation will further clarify the rules for title insurance products and services, specifically as they affect items of value provided to real estate professionals.

Consumers often have little understanding of title insurance and frequently rely on the advice provided by their Realtor or lender. The goal of the regulation is to ensure that real estate professionals who direct title business do so based on the service levels, ethics, reputation, and financial stability of the title entity—not inducements or other remuneration.

#### New rules for Ownership and Encumbrance Reports

One change that real estate professionals will notice immediately is that all Colorado title insurance companies will begin charging for Ownership and Encumbrance (O&E) reports, a product previously provided free of charge in many markets. The O&E charge must be properly filed with the Division of Insurance the same way that rates are filed.

#### New rules for TBD Commitments

Realtors occasionally request a TBD (To Be Determined) Commitment while they are marketing a property. TBDs can help a Realtor better understand the status of title and eliminate any surprises that might compromise the transaction. Beginning May 1, 2010, title entities must charge for TBD at the time the commitment is provided. The charge paid for a TBD may be credited back to the appropriate party at closing.

#### Free products allowed

Title entities may provide, without charge, a single copy of the last recorded vesting deed on a property.

When issuing a commitment for title insurance, a title entity may give, without charge, copies of the supporting title documents for the property.

#### New rules for classes for Realtors

A title entity may teach classes on any subject they feel qualified to teach.

The new rules, however, focus on which classes may be provided free of charge.

If a class is primarily related to the business of title insurance (e.g., commitments, policies, closings, etc.), it may be conducted without charge to the attendees. This includes reasonable expenses for food and beverage and room fees.

If a class does not relate to title insurance (e.g., real estate marketing, real estate forms, etc.), then any costs associated with the class must be passed back to the attendees.

Here is an example of how costs must be passed back to attendees: Assume a title insurance company sponsors a class on Internet marketing for real estate brokers. The company spends \$200 on lunch, \$50 on room rental, \$10 on printed materials, and \$40 on speaker fees, for a total cost of \$300. If there are 50 people taking the class, then each attendee must be charged at least \$6 for the class.

If it costs a title company anything to perform or sponsor the class—even if the costs are minimal—the title company must pass back those costs.

If the same costs were associated with a class on how to read a title commitment, or

what to expect at the closing table, there is no requirement to pass back any costs to the attendees.

### New rules for open houses

A title entity may not give money or any other thing of value to a real estate broker or other settlement producer in exchange for an advertising benefit at an event. Title entities may participate in events if they maintain a physical presence throughout the event.

For example, a title entity may have a table at an open house with refreshments and the title company's marketing materials if an employee of the title entity is present and engaging in the promotion of the entity's services.

### Reasonable title search and exam

All title insurance underwriters are required to create written standards for search and examination for use by title entities (underwriters and agencies). These standards must comply with sound underwriting practices.

This is actually not a new practice. Underwriters have routinely provided standards to their agents and direct insurers; the new rule simply codifies the practice.

### Generic ("garbage") exceptions not allowed

A generic exception on a title commitment is defined as any overly broad exception that is not a standard or preprinted exception. Generic exceptions are sometimes referred to as "garbage" exceptions.

A generic exception does not refer to a specific recorded document (e.g., "Any and all roads, easements, rights of way, etc.>"). These types of exceptions are only permitted in cases where the proposed insured on a commitment has made a written request for a policy form that makes use of them. For practical purposes, it is expected that generic exceptions will only be used for refinance and junior lien transactions. Very few purchase transactions (i.e., owners' policies) will make use of these exceptions.

Aside from the standard or preprinted exceptions, all exceptions on a title commitment or policy must refer to the specific recording information on the document. If a document is not recorded, the title entity should reference any identifiable information on the document. The identifiable information may include dates,

names of parties, case numbers, and similar defining information.

Again, providing book-and-page exceptions is the industry standard for reputable title insurance companies already, and Realtors, in line with keeping their fiduciary duties to buyers and sellers, generally steer clear of generic exceptions on owners' policies. The new rules codify the standard for the purpose of offering additional protections to the consumer.

### Holding money

When a title insurance company collects money from clients or third parties, all money belonging to others must be deposited in a bank account that is separate from any other funds. This includes portions of premiums that will be sent to an underwriter, earnest money, loan proceeds, escrows, etc.

This account must be labeled or named "fiduciary account," "trust account," "escrow account," or another similar name that identifies the account as one to be used solely for holding these funds.

A title entity is prohibited from mixing these funds with any others. A title entity is also prohibited from using the funds for any purpose other than what is set forth in writing for a specific transaction.

A title entity may deposit fiduciary funds (money belonging to others) into a sweep account or any type of account that uses that money as an investment or revenue generator. The title entity must get written authorization from the owner of that money before depositing it into the account. Not getting written authorization, or getting it after the money is in the account, will be viewed as a violation of the Regulation.

A title entity may earn interest on fiduciary funds as long as a disclosure is provided to all parties that interest has been or will be earned. The disclosure may be given at any time up to and including closing.

There are additional rules for title insurance agencies that receive earnest money without written instructions.

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