

Chapter 18—Conducting the Title Insurance Company and Title Insurance Agent Examination

IMPORTANT NOTE:

The standards set forth in this chapter are based on established procedures and/or NAIC models, not on the laws and regulations of any specific jurisdiction. This handbook is a guide to assist examiners in the examination process. Since it is based on NAIC models, use of the handbook should be adapted to reflect each state's own laws and regulations with appropriate consideration for any bulletins, audit procedures, examination scope and the priorities of examination. Further important information on this and how to use this handbook is included in Chapter 1—Introduction.

This chapter provides a suggested format for conducting title insurance company and title insurance agent examinations. Procedures for conducting life and health insurance company examinations, property/casualty company examinations and other types of specialized examinations—such as managed care organizations, third-party administrators and surplus lines brokers—may be found in separate chapters.

For the purpose of licensing standards, the term “producer” is used, instead of “title agent.” It will be necessary to refer to Chapter 16—General Examination Standards relating to producer licensing.

The examination of title insurance operations may involve any review of one or a combination of the following business areas:

- A. Operations/Management
- B. Complaint Handling
- C. Marketing and Sales
- D. Producer Licensing
- E. Policyholder Service
- F. Underwriting and Rating
- G. Claims
- H. Escrow, Settlement, Closing or Security Deposit Funds
- I. Title Insurance Producer (Agent) Licensing and Relations
- J. Special Considerations for Title Insurance Companies and Title Insurance Agents
- K. Example Title Letter
- L. Example Title Interrogatory
- M. Sample Checklist

When conducting an exam that reviews these areas, there are essential tests that should be completed. The tests are applied to determine if the title insurance company is meeting standards. Some standards may not be applicable to all jurisdictions. The standards may suggest other areas of review that may be appropriate on an individual state basis.

When an examination involves a depository institution or their affiliates, the bank may also be regulated by federal agencies such as the Office of the Comptroller of the Currency (OCC), the Federal Reserve Board, the Office of Thrift Supervision (OTS) or the Federal Deposit Insurance Corporation (FDIC). In addition, banks may also be regulated at the state level. Many states have executed an agreement to share complaint information with one or more of these federal or state agencies. If the examination

results find adverse trends or a pattern of activities that may be of concern to a federal or state agency and there is an agreement to share information, it may be appropriate to notify the agency of the examination findings.

A. Operations/Management

Use the standards for this business area that are listed in Chapter 16—General Examination Standards and the standards set forth below.

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**STANDARDS
OPERATIONS/MANAGEMENT**

Standard 1
The title insurance company acts within the scope of its license.

Apply to: All title companies

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Certificate of authority

_____ Title insurance company system

Others Reviewed

NAIC Model References

Title Insurers Model Act (#628)

Review Procedures and Criteria

No title insurance company may transact any class, type or kind of business other than title insurance.

Title insurance may not be transacted, underwritten or issued by any title insurance company transacting or licensed to transact any other class, type or kind of business.

The title insurance company shall do only title insurance business, reinsure title insurance policies and perform ancillary activities, including examining titles to real property and any interest in real property and procuring and furnishing related information and information about relevant personal property when not in contemplation of, or in conjunction with, the issuance of a title insurance policy.

A title insurance company shall not engage in the business of guaranteeing payment of the principal or the interest of bonds or mortgages.

The title insurance company is expressly authorized to issue closing or settlement protection to a proposed insured upon request, if the title insurance company issues a preliminary report, binder/commitment or title insurance policy.

**STANDARDS
OPERATIONS/MANAGEMENT**

Standard 2

No member of the board of directors of the title insurance company may be a title insurance agent who wrote 1 percent or more of the direct premiums for the previous calendar year.

Apply to: All title insurance companies

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

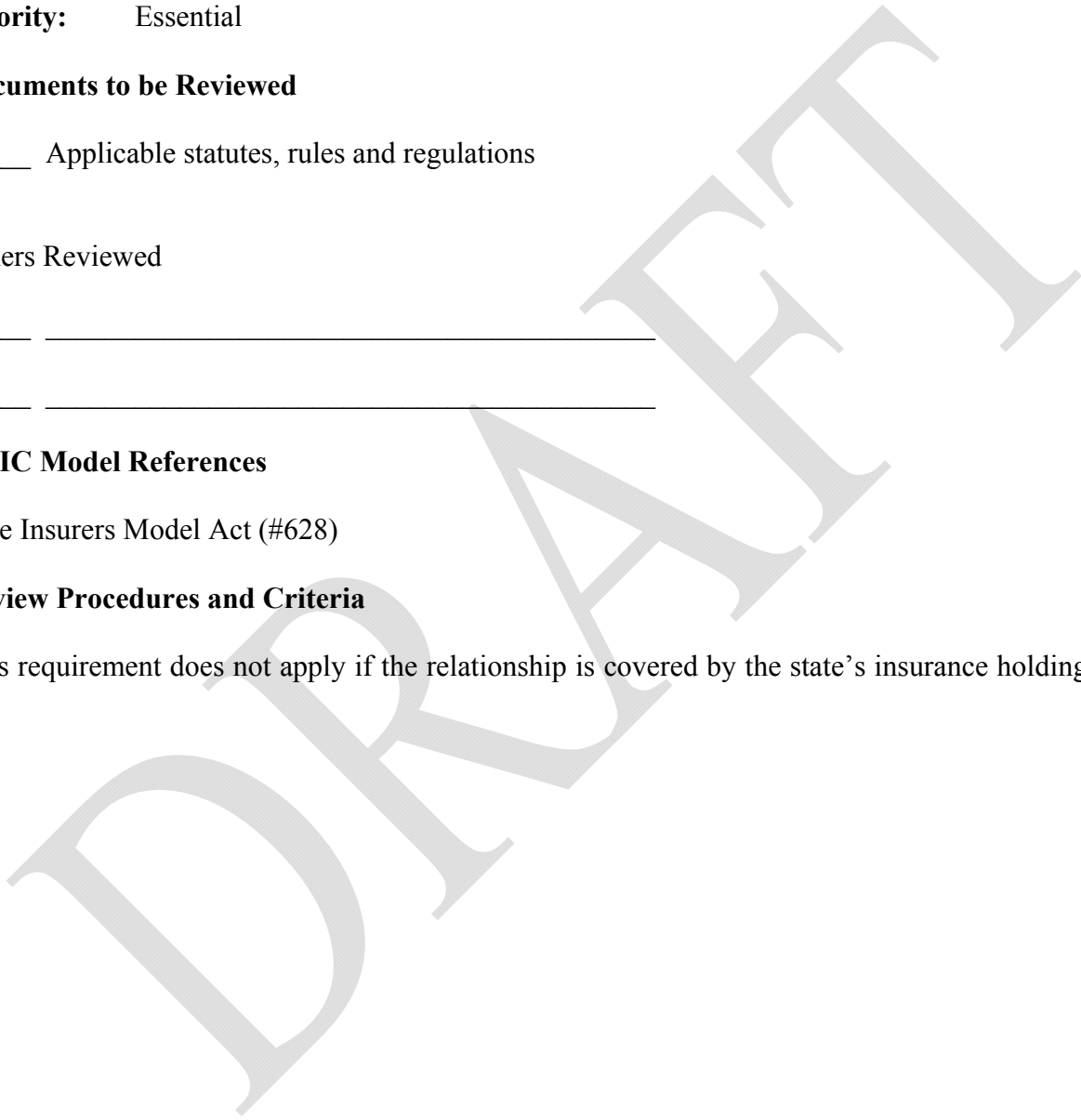
Others Reviewed

NAIC Model References

Title Insurers Model Act (#628)

Review Procedures and Criteria

This requirement does not apply if the relationship is covered by the state’s insurance holding company act.



**STANDARDS
OPERATIONS/MANAGEMENT**

Standard 3

The agency and all applicable employees have in place an errors and omissions policy, fidelity coverage, and/or a surety bond (or alternative financial arrangement, where permitted), if required by statutes, rules and regulations.

Apply to: All title insurance agents

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations, especially insurance examination law

_____ Records of errors and omissions policy, fidelity coverage, surety or financial arrangement

Others Reviewed

NAIC Model References

Title Insurance Agent Model Act (#230)

Review Procedures and Criteria

Some jurisdictions require fidelity coverage to cover all individuals who handle escrow, security deposits and/or closing funds.

**STANDARDS
OPERATIONS/MANAGEMENT**

Standard 4
Business is diversified as required by statutes, rules and regulations.

Apply to: All title insurance companies

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Annual statement

Others Reviewed

NAIC Model References

Title Insurers Model Act (#628)

Review Procedures and Criteria

Business is diversified as required by statutes, rules and regulations. Prior written approval from the insurance department may override the following restrictions.

An independent title insurance agent’s aggregate premiums may not exceed a percentage of the title insurance company’s gross premiums written during the prior calendar year (as required by applicable statutes, rules and regulations).

Direct operations business may not be accepted from a single source in excess of the allowed percentage of the title insurance company’s gross premiums written during the prior calendar year.

A single source means a person that refers business to the title insurance company and any other person that controls, is controlled by or is under common control with that person.

**STANDARDS
OPERATIONS/MANAGEMENT**

Standard 5
There is a periodic review and testing of the title plant built, owned, controlled or maintained by a title agent.

Apply to: All title plants where a title insurance agent builds, owns, controls or maintains the title plant

Priority: Essential

Documents to be Reviewed

- _____ Applicable statutes, rules and regulations, especially insurance examination law
- _____ Title insurance company or title insurance agent standards for title plant construction, use and maintenance
- _____ Title plant
- _____ Agency contract, if applicable
- _____ Claim files

Others Reviewed

- _____
- _____

NAIC Model References

Title Insurance Agent Model Act (#230)

Review Procedures and Criteria

Determine if there are established title plant standards and periodic tests to see that standards are met.

Review claim files to determine if losses paid arise from faulty search of title.

Determine if adequate provisions concerning the title plant are in the agency contract, if applicable.

Note: In some instances, the title insurance company is responsible for overseeing the activities of its agents with respect to maintenance of the title plant. The examiner should be aware that in other instances, the title insurance company and the title insurance agent may be in direct competition with each other. In those situations, the title insurance agent is accountable for ensuring standards for appropriate maintenance of the title plant.

B. Complaint Handling

Use the standards for this business area that are listed in Chapter 16—General Examination Standards.

C. Marketing and Sales

Use the standards for this business area that are listed in Chapter 16—General Examination Standards and the standards set forth below.

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**STANDARDS
MARKETING AND SALES**

Standard 1

Controlled business is handled in accordance with statutes, rules and regulations.

Apply to: All title insurance agents

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

Others Reviewed

NAIC Model References

Title Insurance Agent Model Act (#230)

Review Procedures and Criteria

The title insurance agent must advise customers prior to commencing a transaction of the controlled business arrangement, if required by statutes, rules and regulations.

If a referral is received from an individual who constitutes a controlled business arrangement, the person being referred must be notified that he or she is not required to use a specified title insurance agent or title insurance company, if required by statutes, rules and regulations.

Referrals must be in compliance with the provisions of applicable statutes, rules and regulations as it relates to controlled business.

**STANDARDS
MARKETING AND SALES**

Standard 2

Inducements are not provided, directly or indirectly, in consideration of referral of title insurance business, escrow or other services provided by a title insurance agent.

Apply to: All title insurance companies and title insurance agents

Priority: Essential

Documents to be Reviewed

- _____ Applicable statutes, rules and regulations
- _____ Title insurance company’s correspondence files
- _____ Policy files

Others Reviewed

- _____
- _____

NAIC Model References

- Title Insurance Agent Model Act (#230)
- Title Insurers Model Act (#628)

Review Procedures and Criteria

All transactions must be in compliance with the provisions of applicable statutes, rules and regulations as it relates to referrals.

Referrals may not be originated from a producer or other person that requires, directly or indirectly, placement of the title insurance through a particular agency or title insurance company as a condition precedent to providing a loan, credit, sale, property, contract, lease or service, if prohibited by statutes, rules and regulations.

**STANDARDS
MARKETING & SALES**

Standard 3

Affiliated business arrangements are organized and operated in compliance with statutes, rules and regulations.

Apply to: All title insurance companies and title insurance agents

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Policy files

_____ Response(s) to pre-examination AfBA interrogatories

_____ Accounting records, including but not limited to, copies of cancelled checks, front and back, and disbursements to owners from operating accounts

_____ Ownership documents

_____ Applications, reports and disclosures to the regulatory authority, if required

_____ Documentation of disclosures to consumers, if required

_____ Contracts and service agreements between affiliates

Others Reviewed

NAIC Model References

Title Insurance Agent Model Act (#230)

Title Insurers Model Act (#628)

Review Procedures and Criteria

All arrangements must be organized and operated in compliance with the provisions of applicable statutes, rules and regulations as they relate to referrals, illegal kickbacks, and providing things of value to agency/company owners, referrers of business and potential referrers of business.

Core services are performed by in-house agency/company staff, including title examinations, determination of insurability, clearance of exceptions or objections, the issuance of preliminary

commitment, issuance of title policies, and if normally performed by title agents in the state, conducting the title search and handling of the closing.

All contracted services provided by a party related to the affiliated business entity are obtained at fair market prices, including, for example, accounting, information technology, human resources, payroll, title search, title examination, providing preliminary commitment or issuing title policy. Review contracts, services agreements and disbursements to analyze such affiliate transactions.

Analyze performance of core services, including a review of employee activities and disbursements for contracted services.

Analyze the original source of business. Make note of common settlement producers and the amount of business being referred by each. If the majority of referrals are being submitted by a few persons or entities, examine the ownership/relationship of the referring settlement producer and the entity under examination. Review disbursements for marketing, sales and core service activities to analyze potential referral fees.

The agency/company must be capitalized in compliance with applicable statutes, rules and regulations.

If a referral is received from a person or entity who is part of the affiliated business arrangement, the agency/company and/or referrer must provide its customers in a timely manner with all disclosures required by statutes, rules and regulations, including, for example, disclosure of the affiliated business arrangement and notification that the person being referred is not required to use a specific agency/company. If documentation of disclosure is required, review such documentation. Consider contacting a sample of customers to verify that they received required disclosures.

Determine if reports, applications or disclosures of the affiliated business arrangement to the regulatory authority are required under state statutes, rules and regulations. If so, determine if such documents have been properly filed.

D. Producer Licensing

Not applicable.

E. Policyholder Service

Use the standards for this business area that are listed in Chapter 16—General Examination Standards.

F. Underwriting and Rating

1. Purpose

The underwriting portion of the examination is designed to provide a view of how the title insurance company treats the public and whether that treatment is in compliance with applicable statutes, rules and regulations. It is typically determined by testing a random sampling of files and applying various tests to the sampled files. It is concerned with compliance issues. The areas to be considered in this kind of review include:

- a. Rating practices;
- b. Underwriting practices;
- c. Use of correct and properly filed and approved forms and endorsements;
- d. Unfair discrimination;
- e. Use of proper disclosures, buyers' guides and delivery receipts; and
- f. Statistical coding.

2. Techniques

During an examination, it is necessary for examiners to review a number of information sources, including:

- Rating manuals and rate cards;
- Rate classifications;
- Rating systems filed with regulators;
- Policy fees;
- Discounts;
- Title insurance company automated rating systems;
- Rating materials provided to title insurance agents;
- Underwriting guidelines;
- Applicable policy forms and endorsements;
- Title insurance agent compensation agreements, where applicable;
- Statistical reporting requirements; and
- Underwriting-Underwriting and/or C[CO1]/closing/escrow files content and structure.

For purposes of this chapter, "underwriting-underwriting and/or -closing/escrow file" means the file or files containing rate calculation sheets, billings, and audits—including binders/commitments, all underwriting information obtained or developed, policy schedules A and B, endorsements, the lender's written closing instructions, settlement statements (HUD-1) and Good Faith Estimate (HUD-GFE) forms (if available), correspondence and any other documentation. In many cases, all applicable documentation will not be contained in one file, but rather will be found in separate

underwriting and closing files. Additionally, it should be noted that, since HUD-GFE forms are not required to be given to the title entity, such forms might not be available in all circumstances.

In selecting samples for testing, residential coverages should generally not be combined with commercial coverages. These two areas are not always homogeneous and conclusions or inferences to be made from the results of sampling may not be valid if combined. The examiner should be familiar with any statutory or regulatory distinctions made between residential coverages and commercial coverages with respect to the various tests to be developed. The examiner also should be familiar with the process for gathering and processing underwriting information and the quality controls for the issuance of policies and endorsements. The list of files from which a sample is to be drawn may be generated through a computer run or, in some cases, through a policy register covering the period of time selected in the notice or call of examination.

Determine the title insurance company's policy population (policy count). Review a random selection of business for application of a particular test or apply specific tests to a census population using automated tools. (In the event specific files are chosen for a target review, the examiner must be certain the examination results are clearly identified as representative of the target selection.) The examiner should maintain a list of the various tests to be applied to each file in the sample. This will aid in consistency by ensuring that each test is considered for each file in the sample.

If exceptions are noted, the examiner must determine if the exception is caused by such practices as the use of faulty automated rating systems or the development of improperly or vaguely worded manuals or guidelines. When exceptions are noted, it is advisable to determine the scope and extent of the problem. The examiner's responses should maximize objectivity; the examiner should avoid replacing examiner judgment for title insurance company judgment.

a. Rating Practices

It is necessary to determine if the title insurance company is in compliance with rating systems which have been filed with and, in some cases, approved by, the various state insurance departments. Where rates are not required to be filed with an applicable regulatory agency, it is prudent to determine if rates are being applied consistently and in accordance with the title insurance company's own rating methods. In general, rates should not be unfairly discriminatory. Wide-scale application of incorrect rates by a title insurance company may raise financial solvency questions or be indicative of inadequate management oversight. Deviation from established rating plans may also indicate that a title insurance company is engaged in unfair competitive practices. Inconsistent application of rates, individual risk premium modifications, modification factors and deviations can result in unfair discrimination.

The procedure for determining adherence to rates filed or used by a title insurance company may vary between residential coverages and commercial coverages. The examiner should become familiar with the title insurance company's policy form numbers or other identification procedures, inasmuch as references may be made to such numbers or procedures in lieu of having the particular form attached.

When possible, the examination team should make use of audit software to verify correct application of specific rating components. This allows for a more thorough review and can save time during the examination process.

Rating practices of policies and endorsements should be reviewed. The examiner should ensure that the ~~underwriting~~~~underwriting~~~~and/or~~~~closing/escrow~~ files contain sufficient information to support the rates that have been applied to a policy or endorsement. Inherent in the more complex systems is the concern for unfair discrimination.

b. Underwriting Practices

The examiner should review relevant underwriting information; e.g., the title insurance company's underwriting guidelines, underwriting bulletins, agency agreements and correspondence with title insurance agents. The examiner may review interoffice memoranda and title insurance company minutes for indications of anti-competitive behavior or unfairly discriminatory practices. The examination team also will use the above information to determine title insurance company compliance with its manuals and guidelines. The examiner should confirm that the title insurance company underwriters and title insurance agents consistently apply the title insurance company guidelines for all business selected. The examination team should verify that the title insurance company has correctly classified insured individuals.

File documentation should also be sufficient to support underwriting decisions made. Underwriting decisions that are adequately documented generally afford management of the title insurance company the opportunity to know what business it has selected through its underwriters and title insurance agents. ~~Closing/escrow files~~Files should be reviewed for compliance with all escrow closing written instructions provided by the lender relevant parties. (In most cases, this will apply to lender's closing instructions. However, other written instructions, such as tax or escrow agreements, disbursement instructions, etc. should also be reviewed). The examiner should verify that properly licensed and appointed (where applicable) title insurance agents have been used in the production of business.

Any practice suggesting anti-competitive behavior may involve legal considerations which should be referred to insurance department legal counsel. Ultimately, the information so obtained may be useful in drafting legislation or regulations.

c. Use of Correct and Properly Filed Forms and Endorsements

The examination team should verify that all policy forms and endorsements used have been filed with the appropriate regulatory authority, if applicable. Additionally, the examination team should verify the consistent and correct use of policy forms and endorsements. The examiner should also be mindful of possible outdated forms or endorsements. If coverages and riders requested by the applicant are not issued, proper notification should be provided to the applicant. In some cases, supplemental applications are appropriate.

d. Unfair Discrimination

The examination team should be mindful of company underwriting practices that may be unfairly discriminatory. The classification of insureds into rating or underwriting groups must be based on sound business or actuarial principles. Failure to follow established rating and underwriting guidelines may result in unintentional yet unfair discrimination. Unfair trade practice acts and related regulatory rules adopted by the applicable jurisdiction also may prohibit specific underwriting practices.

e. Use of Proper Disclosures, Buyers' Guides and Delivery Receipts

The examiner should inquire into any reinsurance agreements or affiliated business arrangements or agreements with a third party whereby insurance is arranged, reinsured, purchased through or ceded on title business written on personal or commercial properties. Errors should be noted with regard to overcharges or undercharges.

f. Statistical Coding

The examiner should review the title insurance company's statistical coding procedures. Coding on individual policies should be current and accurate. The examiner should determine to what statistical agencies the title insurance company reports its rating/underwriting data.

3. Tests and Standards

The underwriting and rating review includes, but is not limited to, the following standards addressing various aspects of the title insurance company's underwriting activities. The sequence of the standards listed here does not indicate priority of the standard.

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**STANDARDS
UNDERWRITING AND RATING**

Standard 1
Re-issue and refinance credits are applied consistently in compliance with statutes, rules and regulations.

Apply to: All title insurance companies and title insurance agents

Priority: Essential

Documents to be Reviewed

- _____ Applicable statutes, rules and regulations
- _____ New business application
- _____ Policy schedules A and B
- _____ Settlement statement (HUD-1) and HUD-1GFE forms
- _____ Good Faith Estimate (HUD-GFE) forms (if available)

Others Reviewed

- _____
- _____

NAIC Model References

- Title Insurance Agent Model Act (#230)
- Title Insurers Model Act (#628)

Review Procedures and Criteria

A copy of the previously issued title insurance policy should be maintained on file, if necessary pursuant to rate requirements.

Documentation should be maintained to ensure there was adequate inquiry made regarding the existence of a prior title insurance policy, if necessary pursuant to rate requirements.

In cases where a prior policy is not required in the application of a reissue or refinance rate, documentation should be maintained to ensure there was adequate inquiry and/or examination made regarding the applicability of discounts used in calculating rates.

**STANDARDS
UNDERWRITING AND RATING**

Standard 2

The title insurance company does not engage in collusive or anti-competitive underwriting practices.

Apply to: All title insurance companies

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

| _____ ~~Underwriting~~ Underwriting and/or C/closing/escrow files

Others Reviewed

NAIC Model References

Title Insurers Model Act (#628)

Review Procedures and Criteria

Any practice suggesting anti-competitive behavior may involve legal considerations which should be referred to insurance department legal counsel. This would include engaging in collusive underwriting practices that may inhibit competition.

The examiner should be aware of unlawful pricing and other prohibited anti-competitive acts or practices.

**STANDARDS
UNDERWRITING AND RATING**

Standard 3

Charges or fees other than premium for providing coverage are in compliance with statutes, rules and regulations.

Apply to: All title insurance companies and title insurance agents

Priority: Recommended

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Applicable state fee filings

_____ Underwriting and/or closing/escrow files

_____ Settlement statement (HUD-1) and HUD-1 form GFE forms

_____ Good Faith Estimate (HUD-GFE) forms (if available)

Others Reviewed

NAIC Model References

Title Insurance Agent Model Act (#230)

Title Insurers Model Act (#628)

Review Procedures and Criteria

Review a random sample of real estate transaction underwriting and/or closing/escrow files to determine whether charges and fees, other than premium, being charged to consumers are in accordance with applicable filings, laws, rules or regulations (if any). Review applicable statutes, rules, and regulations relating to such charges and fees. The laws in this area will vary widely by state from prior-approved all-inclusive rates to non-regulated rates and fees.

Review charges and fees to determine if such charges and fees are RESPA compliant.

Review HUD-1 forms associated with the above random sample of real estate transaction closing/escrow files to confirm that all charges and fees identified above are properly disclosed on the HUD-1 form. In the event that charges required to be disclosed on a GFE and/or HUD-1 form vary from charges previously issued to the consumer on a GFE and/or HUD-1 form, verify that proper revised GFE and/or HUD-1 forms have been re-issued to the consumer, within the time period established by

~~and in accordance with RESPA (Real Estate Settlement Procedures Act) rules, and TILA (Truth in Lending Audit) disclosure requirements.~~

~~Review closing/escrow files to ensure that, if a revised GFE form has been issued, a revised HUD-1 form is also being utilized.~~

~~If a settlement provider chooses to use average pricing as a means of calculating and disclosing settlement charges, review closing/escrow files to verify that there is proper documentation of (1) all charges qualifying for average pricing and (2) the average pricing structure in effect at the time of closing, pursuant to applicable state statutes, rules and regulations.~~

~~Review closing/escrow files to determine if (1) any agreements between the lender and the title agent, or (2) any guarantees made by the title agent to the lender, guaranteeing any prices other than the title agent's filed fees or charges, have been made.~~

~~Review written documentation of the lender's closing instructions in the closing/escrow files to verify that all closing instructions provided by the lender/relevant parties were followed. Review closing/escrow files to determine if transactions in escrow are ever closed in the absence of lender written instructions.~~

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**STANDARDS
UNDERWRITING AND RATING**

Standard 4

Other than closing or settlement protection, the title insurance company does not provide any other coverage which purports to indemnify against improper acts or omissions of a person with regard to escrow, settlement or closing services.

Apply to: All title insurance companies

Priority: Recommended

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Settlement statement ([HUD-1](#)) and [HUD-1GFE forms](#)

_____ [Good Faith Estimate \(HUD-GFE\) forms \(if available\)](#)

Others Reviewed

_____ Case law for state impacted

NAIC Model References

Title Insurers Model Act (#628)

Review Procedures and Criteria

Review all coverage being offered and/or issued by the title insurance company to determine if it is within the definition of title insurance under the applicable statutes, rules and regulations.

Some jurisdictions require that all forms be filed and approved prior to use. In such jurisdictions, review forms to confirm that forms have been properly filed with the appropriate insurance department.

**STANDARDS
UNDERWRITING AND RATING**

Standard 5

The closing or settlement protection conforms to the terms of coverage and form of instrument as required by statutes, rules and regulations.

Apply to: All title insurance companies and title insurance agents

Priority: Recommended

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

Others Reviewed

_____ Case law for state impacted

NAIC Model References

Title Insurance Agent Model Act (#230)

Title Insurers Model Act (#628)

Review Procedures and Criteria

Where permitted or required, determine if closing or settlement protection is being offered by the company and/or agent.

Confirm that any closing or settlement protection being offered is in a form that complies with the applicable statutes, rules and regulations.

Some jurisdictions require that all closing or settlement protection forms be filed and approved prior to use. In such jurisdictions, review forms to confirm that forms have been properly filed with the appropriate insurance department.

**STANDARDS
UNDERWRITING AND RATING**

Standard 6
Reports and disclosures are made in accordance with statutes, rules and regulations.

Apply to: All title insurance companies and title insurance agents

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

Others Reviewed

NAIC Model References

Title Insurance Agent Model Act (#230)
Title Insurers Model Act (#628)

Review Procedures and Criteria

The title insurance report and/or commitment shall be furnished to the purchase-mortgagor or its representative as soon as reasonably possible prior to closing if the report includes an offer to issue an owner’s policy covering the resale of the owner-occupied residential property.

Documentation of the reason for delay is maintained for title insurance reports, which are not delivered prior to the day of closing.

Required disclosures are made on reports not delivered prior to the day of closing:

“Please read the exceptions and the terms shown or referred to herein carefully. The exceptions are meant to provide you with notice of matters, which are not covered under the terms of the title insurance policy and should be carefully considered.

It is important to note that this form is not a written representation as to the condition of title and may not list all liens, defects and encumbrances affecting title to the land.”

In accordance with applicable law, a written statement is provided or obtained when a lender’s title insurance policy is issued in conjunction with a mortgage loan made simultaneously with the purchase of all or part of the real estate securing the loan where no owner’s title insurance policy has been requested.

The notice must be provided to the purchaser-mortgagor at the time the commitment is prepared.

The notice shall explain that a lender's title insurance policy is to be issued protecting the mortgage-lender and that the policy does not provide title insurance protection to the purchaser-mortgagor as the owner of the property being purchased.

The notice shall explain what a title insurance policy insures against through the purchase of an owner's policy.

The notice shall explain that the purchaser-mortgagor may obtain an owner's title insurance policy protecting the property owner at a specified or approximate cost, if the proposed coverages or amount of insurance is not known.

Copies of written notices prepared when a lender's title insurance policy is issued in conjunction with a mortgage loan made simultaneously with the purchase of all or part of the real estate securing the loan where no owner's title insurance policy has been requested are maintained in the underwriting file for at least five years after the effective date of the policy.

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**STANDARDS
UNDERWRITING AND RATING**

Standard 7

The title insurance company complies with statutes, rules and regulations regarding the recording, reporting and validation of revenue, loss and expense experience.

Apply to: All title insurance companies

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Underwriting files

_____ Rating organization’s coding manual

Others Reviewed

NAIC Model References

Title Insurers Model Act (#628)

Review Procedures and Criteria

Validation may include certification by oath of the title insurance company’s or title insurance agent’s president, vice president or secretary.

Audits may be required by the insurance department. The audit should be conducted by an independent certified public accountant.

An actuarial certification is required to be filed with the title insurance company annual statement. The actuarial certification must conform to the NAIC annual statement instructions.

**STANDARDS
UNDERWRITING AND RATING**

Standard 8
All policies are correctly coded.

Apply to: All title insurance companies and title insurance agents

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Underwriting files

_____ Title insurance company’s rating system

_____ Title insurance company’s coding manual

_____ Rating organization’s coding manual

Others Reviewed

NAIC Model References

- Model Regulation to Require Reporting of Statistical Data by Property and Casualty Insurance Companies (#751)
- Title Insurance Agent Model Act (#230)
- Title Insurers Model Act (#628)

Review Procedures and Criteria

Determine that the title insurance company confirms the coding as reported by the title insurance agent is correct and current in accordance with applicable statutes, rules and regulations.

Determine that the title insurance company promptly updates all coding manuals and programs.

Determine that the title insurance company correctly codes all policies according to current codes.

G. Claims

1. Purpose

The claims portion of the examination is designed to provide a view of how the title insurance company treats claimants and whether that treatment is in compliance with applicable statutes, rules and regulations. It is determined by testing a random sampling of files and applying various tests to open and closed claims. For purposes of this chapter “claim file” means the file or files containing the notice of claim; claim forms; settlement demands; claim investigation documentation; correspondence to and from insureds and claimants or their representatives; complaint correspondence; copies of claim checks or check numbers and amounts; releases; all applicable notices and correspondence used for determining and concluding claim payments or denials and any other documentation necessary to support claim handling activity.

The review is concerned with the title insurance company’s claims practices for compliance with statutes, rules and regulations and policy provisions. In addition to the general areas of review discussed in Chapter 16—General Examination Standards, a loss statistical reporting survey should also be performed.

Determine to which statistical agencies the title insurance company reports its loss data. Review claim drafts to determine if loss data is correctly coded as to the proper line of business. Review drafts to determine if claim expenses are separated from claim payments. If the review indicates significant errors in coding, the data should be included in the report.

**STANDARDS
CLAIMS**

Standard 1

Indemnification of a proposed insured solely against the loss of settlement funds may only be made for events as authorized by statutes, rules or regulations.

Apply to: All title insurance companies and title insurance agents

Priority: Recommended

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Title insurance company’s claim manuals

Others Reviewed

NAIC Model References

Title Insurance Agent Model Act (#230)

Title Insurers Model Act (#628)

Review Procedures and Criteria

Where addressed by applicable statutes, rules and regulations, ensure that the closing or settlement protection only indemnifies against the following acts of a title insurance agent:

- Theft of settlement funds; and
- Failure to comply with written closing instructions by the proposed insured when agreed to by the title insurance agent relating to title insurance coverage.

**STANDARDS
CLAIMS**

Standard 2
Loss statistical coding is complete and accurate.

Apply to: All title insurance companies

Priority: Essential

Documents to be Reviewed

- _____ Applicable statutes, rules and regulations
- _____ Claim files
- _____ Title insurance company’s claims coding manual
- _____ Title insurance company’s coding system
- _____ Rating organization’s coding manual

Others Reviewed

- _____
- _____

NAIC Model References

- Model Regulation to Require Reporting of Statistical Data by Property and Casualty Insurance Companies (#751)
- Title Insurers Model Act (#628)
- Unfair Claims Settlement Practices Act (#900)
- Unfair Property/Casualty Claims Settlement Practices Model Regulation (#902)

Review Procedures and Criteria

- Determine that the title insurance company codes the correct loss data onto the draft copies or system.
- Determine that the title insurance company promptly updates all coding manuals and programs.
- Determine that the title insurance company accurately codes the loss amounts.
- Determine that the title insurance company separates loss amounts from loss expense amounts.

H. Escrow, Settlement, Closing or Security Deposit Funds

1. Purpose

Title insurance companies, title insurance agents, approved attorneys and escrow companies provide services that reflect the unique nature of real estate transactions in our society. Services provided vary from one area of the country to another and may include acting as escrow agent, obtaining releases and conducting the actual closing or settlement. However, the essential purpose is the same; i.e., to assist the parties in real estate transactions by ensuring the acquisition or transfer of property interest can be effected with a maximum degree of efficiency, security and safety.

An escrow is a transaction in which an impartial third party acts in a fiduciary capacity as an agent for the seller, buyer, borrower and lender. In some states or jurisdictions, this function is performed by the title insurance company or agency.

The escrow holders have fiduciary and contractual responsibility for prudent processing, safeguarding and accounting for funds entrusted to them by escrow customers. Accordingly, this responsibility results in significant exposure to losses from inadvertent or intentional failure to execute their duties properly.

2. Techniques

The authority for review of escrow, settlement, closing and security deposit funds activities may or may not belong to the state insurance department. The examiner should ensure this area falls under their department's jurisdiction prior to review of these standards.

3. Tests and Standards

The escrow, settlement, closing and security deposit funds review includes, but is not limited to, the following standards addressing various aspects of these fiduciary responsibilities. The sequence of the standards listed here does not indicate priority of the standard.

STANDARDS
ESCROW, SETTLEMENT, CLOSING OR SECURITY DEPOSIT FUNDS

Standard 1

All escrow, settlement, closing or security deposit funds are submitted for collection to or deposited in a separate fiduciary trust account in a qualified financial institution promptly and in accordance with statutes, rules and regulations.

Apply to: All title insurance companies and title insurance agents

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

Others Reviewed

NAIC Model References

Title Insurance Agent Model Act (#230)
Title Insurers Model Act (#628)

Review Procedures and Criteria

The funds are the property of the person(s) entitled to them and are segregated for each depository by escrow, settlement, security deposit or closing in the records which allows individual identification.

The funds are applied in accordance with the terms of the individual instructions or agreements by which the funds were accepted.

Ensure the funds are handled as follows:

- Funds held in escrow are disbursed pursuant to the written instruction or agreement specifying how and to whom the funds should be disbursed;
- Funds held in a security deposit account are disbursed in accordance with the written agreement; and
- The written agreement for funds held in a security deposit account complies with requirements of statutes, rules and regulations:
 - The agreement includes what actions the indemnitor needs to take to satisfy his or her obligation under the agreement; and
 - The agreement includes the duties of the title insurance company and title insurance agent with respect to the disposition of the funds held.

- There is a requirement to maintain evidence of the disposition of the title exception or objection before any balance may be paid over to the depositing party or their designee.

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STANDARDS
ESCROW, SETTLEMENT, CLOSING OR SECURITY DEPOSIT FUNDS

Standard 2

Interest received on funds deposited in connection with any escrow, settlement, security deposit or closing shall be paid in accordance with applicable statutes, rules and regulations.

Apply to: All title insurance companies and title insurance agents

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

Others Reviewed

NAIC Model References

Title Insurance Agent Model Act (#230)

Title Insurers Model Act (#628)

Review Procedures and Criteria

Administrative costs (i.e., the cost of maintaining the accounts) may be recovered from the interest.

Instructions for the funds or a governing statute may override this standard.

Refer to local statutes, rules and regulations relative to administrative/interest cost recovery. In the event of remittance delays that are contrary either to local law or the agency contract itself, the examiner may wish to explore the agency’s financial condition vis-à-vis cash flow problems. If a pattern of delay exists relative to tax statements, and if funds are found to be commingled (i.e., funds in the premium account are being used in addition to an operating account; operating costs are being paid out of a trust account; etc.), for solvency reasons, examiners should report such findings to their appropriate financial examination section.

STANDARDS
ESCROW, SETTLEMENT, CLOSING OR SECURITY DEPOSIT FUNDS

Standard 3

Disbursements made from an escrow, settlement or closing account are done in accordance with statutes, rules and regulations.

Apply to: All title insurance companies and title insurance agents

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

Others Reviewed

NAIC Model References

Title Insurance Agent Model Act (#230)

Title Insurers Model Act (#628)

Expedited Funds Availability Act, 12 U.S.C Section 4001 et seq. as amended, and related regulations of the Federal Reserve System

Review Procedures and Criteria

Files should be balanced prior to closing to ensure sufficient deposits have been made to equal calculated disbursements. Disbursements should be made only from collected funds related to the same escrow.

“Collected funds” as used herein means:

- Cash;
- Wire transfers that are unconditionally received and available for disbursement;
- Certified, cashier and teller checks from an institution insured by the FDIC or the National Credit Union Share Insurance Fund;
- U.S. Treasury checks; or
- Checks that have cleared the banking system.

I. Title Insurance Producer (Agent) Licensing and Relations

Use the standards set forth below.

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STANDARDS
TITLE INSURANCE PRODUCER (AGENT) LICENSING AND RELATIONS

Standard 1

Written underwriting contracts, which include required provisions, are in place between title insurance agencies and all applicable title companies, and business is not placed without a contract.

Apply to: All title insurance companies and title insurance agents

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Written agreements

Others Reviewed

NAIC Model References

Title Insurance Agent Model Act (#230)
Title Insurers Model Act (#628)

Review Procedures and Criteria

The agreement shall set forth the responsibilities of each party and explain the division of responsibilities if a particular function is a shared responsibility between the two parties.

The agreement should incorporate underwriting guidelines and limitations on title claims settlement authority.

The written agreement should include the following:

- Responsibilities of each party and division of responsibilities clearly specified;
- Provisions applicable to contract termination and notice of cancellation;
- Provisions specifying requirements for reporting and remittal of funds.
- Provisions related to the fiduciary capacity and handling of title insurance company funds;
- Provisions related to ownership and access to policy records, escrow files and claim files;
- Provisions applicable to assignment of the contract;
- Guidelines related to the basis of rates charged, types of risks which may be written, maximum limits of liability, territorial limitations, title searches, examinations and underwriting;
- Provisions regarding the reporting of claims, claim settlement authority and risk retention;
- Where prohibited, the contract may not permit title insurance agents to bind reinsurance on behalf of the title insurance company or appoint a title insurance sub-agent; and

- The title insurance agent shall not bind reinsurance or retrocessions on behalf of the title insurance company.

DRAFT

STANDARDS
TITLE INSURANCE PRODUCER (AGENT) LICENSING AND RELATIONS

Standard 2
Policies and premiums are reported and remitted on a timely basis.

Apply to: All title insurance companies and title insurance agents

Priority: Recommended

Documents to be Reviewed

- _____ Applicable statutes, rules and regulations
- _____ Listing of title insurance agent accounts current exceeding contract limits
- _____ Title insurance agent and/or agency contracts
- _____ Agency listing of issued and unexpired commitments where the final title insurance policy has not yet been issued
- _____ Agency listing of issued title insurance policies that have not yet been reported to the title insurer

Others Reviewed

NAIC Model References

- Title Insurance Agent Model Act (#230)
- Title Insurers Model Act (#628)

Review Procedures and Criteria

The focus of this standard relating to title insurance agent accounts current is to aid in the detection of fraud or misuse of funds held by the title insurance agent in a fiduciary capacity.

In many cases, title insurance premium is paid to the agency at the time of a real estate closing. Following the closing, certain conditions—such as mortgage releases or filings—may need to be met prior to issuance of the policy. Payment of premium to the title insurer by the agency often occurs after policy issuance. Examiners should request a listing of all files where agents have issued commitments but the final title insurance policies have not been issued. Preferably, the listing should provide an aging of those files. If not, the examiner should sample the files to determine the aging and reasons why final policies have not been issued. Examiners should determine what procedures are in place at the agency to follow up on those files to hasten completion, especially for those files in which premium payment has been received by the agency. In instances where a listing is not readily available, the examiner should physically inspect all locations where such files are stored to obtain an inventory or approximation.

Examiners should request a listing of all files where the agency has issued final title policies, but not yet reported the policies to the title insurer. Determine that reporting is being handled in accordance with the insurer/agency agreement and ascertain an estimated reporting date and reason for any policies outside the scope of that agreement.

For both issued commitments pending issuance of the title policy (where the agency has collected premium) and issued policies not yet reported to the insurer, the examiner should obtain an estimated premium owed. The examiner should determine that the agency has kept those funds available for remittance to the insurer.

Review a listing of title insurance agent accounts current.

Discuss excessive balances with the title insurance company.

Refer to the appropriate division within the insurance department, if necessary.

DRAFT

STANDARDS
TITLE INSURANCE PRODUCER (AGENT) LICENSING AND RELATIONS

Standard 3

The title insurance company maintains a record of financial stability for each title insurance agent under contract with the title insurance company.

Apply to: All title insurance companies

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Errors and omissions, fidelity coverage and surety bonds

_____ Credit history report

Others Reviewed

NAIC Model References

Title Insurers Model Act (#628)

Review Procedures and Criteria

Verify that errors and omissions, fidelity coverage and surety bonds are in place, if required by statutes, rules and regulations.

STANDARDS
TITLE INSURANCE PRODUCER (AGENT) LICENSING AND RELATIONS

Standard 4

The title insurance company conducts a review of underwriting, claims and escrow practices of the title insurance agent in accordance with statutes, rules and regulations.

Apply to: All title insurance companies

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Insurer audit reports of agent reviews

Others Reviewed

NAIC Model References

Title Insurers Model Act (#628)

Review Procedures and Criteria

This review should include a review of the title insurance agent’s policy inventory and processing operations.

If the title insurance agent does not maintain separate bank or trust accounts for the premiums for each title insurance company the agent represents, the title insurance company shall verify that the funds held on its behalf are reasonably ascertainable from the books of account and records of the title insurance agent.

Note: In some jurisdictions, the title insurance company is required to conduct this review on-site.

STANDARDS
TITLE INSURANCE PRODUCER (AGENT) LICENSING AND RELATIONS

Standard 5
The title insurance company maintains an inventory of all policy forms or policy numbers allocated to each title insurance agent.

Apply to: All title insurance companies

Priority: Recommended

Documents to be Reviewed

- _____ Applicable statutes, rules and regulations
- _____ Policy register, stock list, log or similar record

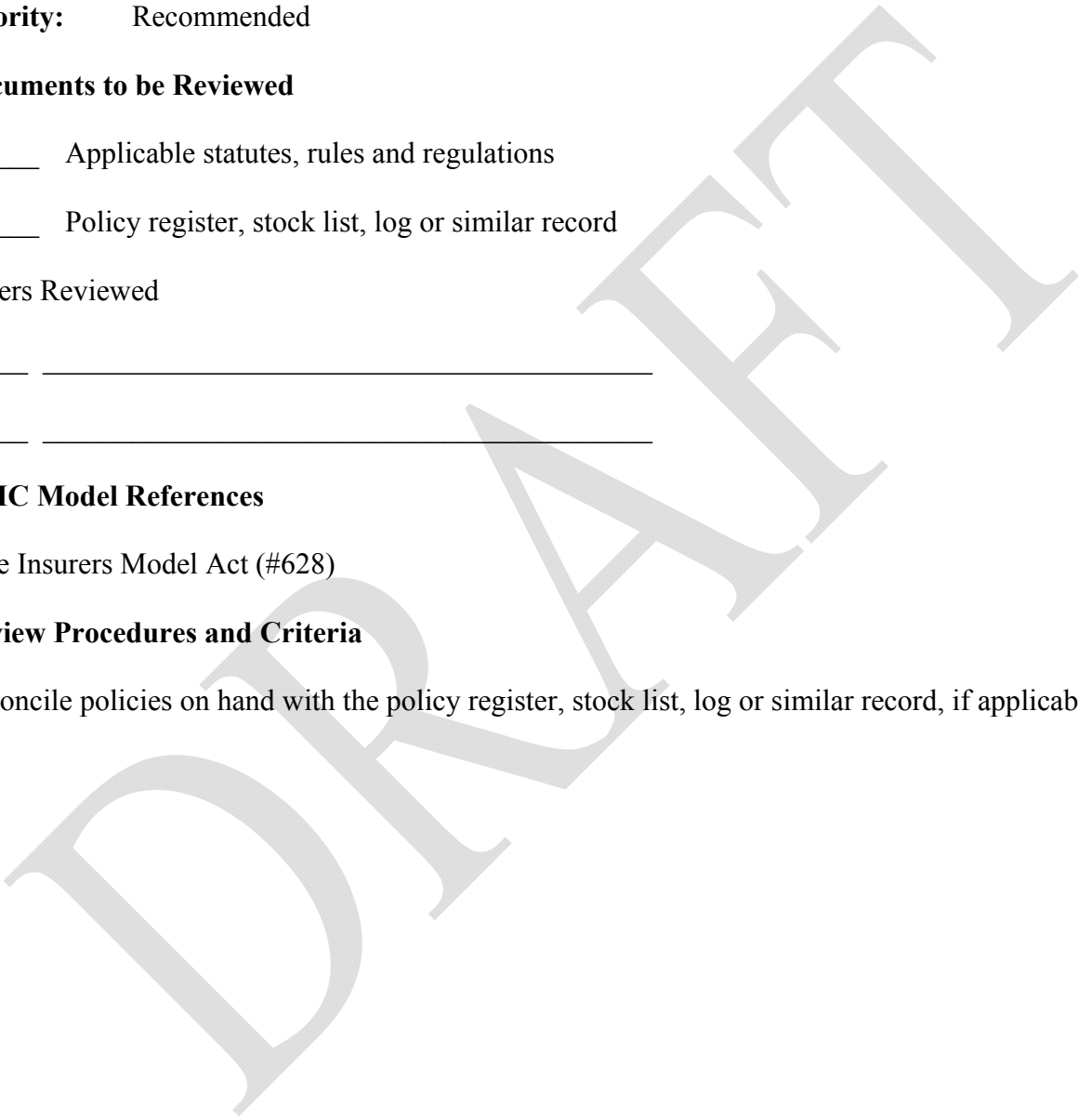
Others Reviewed

NAIC Model References

Title Insurers Model Act (#628)

Review Procedures and Criteria

Reconcile policies on hand with the policy register, stock list, log or similar record, if applicable.



J. Special Considerations for Title Insurance Companies and Title Insurance Agents

In title insurance, there is risk elimination where potential defects that would produce loss are identified and specifically excluded from coverage or where certain risks may be over-insured, excluded or corrected. The policy is written to indemnify against losses to the title to real property, as stated in the policy on the date of policy issuance and has no expiration. Coverage is provided at any time thereafter, if the title was not as stated in the policy at that precise point in time.

Title insurance companies and title insurance agents may also be regulated or governed by banking authorities, the U.S. Department of Housing and Urban Development (HUD) or other authorities. In some states, title insurance statutes reference the federal Real Estate Settlement Procedures Act (RESPA), in which case the examiner should be familiar with the provisions of RESPA, 12 U.S.C., Section 2607, as amended. The Expedited Funds Availability Act, 12 U.S.C. Section 4001 et seq. as amended and related regulations of the Federal Reserve System should also be referenced.

Many of the requirements in this chapter are in accordance with the NAIC Title Insurers Model Act and the NAIC Title Insurance Agents Model Act. Examiners should be familiar with the applicable statutes in their jurisdiction and apply only those standards and tests suggested in this chapter that are based in statute, rule or regulation in their jurisdiction.

An examination of title insurance agencies should include verification of compliance with issues which are both common with other types of insurance and unique to title insurance. In addition to licensing, appointment, disclosure, policyholder treatment and record retention requirements, the examiner should review issues relating to referrals, controlled or affiliated business relationships, underwriting contracts with companies, bond and errors and omissions coverage requirements, escrow accounts and audits.

An understanding of terms, definitions and typical business practices which are unique to title insurance is also helpful. An example is the term “producer” as used by the title insurance profession. Whereas the term “producer” in most lines of insurance may be used to refer to an insurance agent or broker, the term “producer,” as it relates to title insurance, refers to persons involved in the buying and selling of real estate, mortgage loans, lenders or attorneys. It is significant that many in the title insurance profession do not view the property owner as their customer. They view persons involved in the buying and selling of real estate, mortgage loans, lenders or attorneys as their customer—as these are entities that frequently exercise the ability to select a title insurer or title insurance agent on behalf of the named insured. The examiner should be aware that in some jurisdictions, on a purchase transaction, policies are commonly issued to both an owner and mortgagee, while in other jurisdictions, on a purchase transaction, policies may only be issued to a mortgagee, although the owner always has the option to purchase a policy. When the transaction involves a refinance, the mortgagee commonly purchases a policy but the owner does not, although the owner always has the option to purchase a policy. When the transaction involves a refinance, the mortgagee commonly purchases a policy but the owner does not.

In most jurisdictions, title insurance is a monoline policy, which can only be written by title insurance companies who are prohibited from writing any other line of business. In addition to issuing a title policy, in some jurisdictions, title insurance agencies may perform a variety of functions, including performing title searches, abstracting, performing underwriting functions, establishing and handling escrow funds and performing real estate closings. Approved attorneys, depending on the jurisdiction, will perform many of the same tasks as a title agent, but generally do not issue title policies. Approved attorneys are licensed by their local state bar association and are not licensed by the insurance department.

The agreement by the title insurer to provide the typical title insurance policy is usually referred to as a “commitment” or “preliminary commitment to title insurance.” The commitment generally specifies what defects need to be corrected prior to title policy issuance, together with the conditions, exclusions or exceptions that will appear in the title policy, when issued. When issued, a title policy may cover the interests of the real estate lender or the buyer whose interests differ. Title insurance rates vary from state to state and are regulated in a variety of ways: promulgation, prior approval, file and use, use and file and no direct regulation. Under all of the above, there is usually a discount applied for simultaneously issued policies, refinancing or to a property for which a previous title policy was issued within some specified period of time.

In many instances, the examiner will need to access and review records at the title insurance agent’s office during a title insurance company examination.

In some jurisdictions, there are “title plants” that duplicate the public record affecting real property and reorganize those records, typically by legal description. In those jurisdictions in which the title insurance agent builds, owns, controls or maintains a title plant used to search title preliminary to the issuance of a title policy, it is important that the examiners verify that there are appropriate standards for maintenance of the title plant. It is also critical that the insurer provide an adequate level of oversight of such an agent.

The examiners should request the following items upon initiating a title insurance agent examination:

- Issued commitment files with no policy issued;
- A listing of all files or orders in which commitments have been issued, but policies have not yet been issued (whether or not outstanding conditions have been met and reported);
- Issued policies not yet reported to the underwriter; and
- A listing of all issued title policies and endorsements for which reporting to the title insurer is pending or not yet accomplished, as of the date of the request.

K. Example Title Letter

DATE

Address

Re: **Affiliated Business Arrangements**

Dear

The ____ Division of Insurance is conducting an investigation of affiliated business arrangements (“AfBAs”) in the title insurance industry. The Division is sending this letter to all title insurance agencies licensed in the State of _____ to facilitate the investigation. **Please respond to this inquiry within ten (10) business days from the date of this letter.**

According to _____ law, the term “affiliated business arrangements” means:

“Settlement producer” means:

“Affiliate” means:

State insurance commissioners are authorized to enjoin violations of the federal Real Estate Settlement Procedures Act (RESPA). RESPA defines an AfBA as:

(A)n arrangement in which (A) a person who is in a position to refer business incident to or a part of a real estate settlement service involving a federally-related mortgage loan, or an associate of such person, has either an affiliate relationship with or a direct or beneficial ownership interest of more than 1 percent in a provider of settlement services; and (B) either of such persons directly or indirectly refers such business to that provider or affirmatively influences the selection of that provider.

12 U.S.C. § 2602(7). Furthermore, RESPA defines “associate” as follows:

The term “associate” means one who has one or more of the following relationships with a person in a position to refer settlement business: (A) a spouse, parent or child of such person; (B) a corporation or business entity that controls, is controlled by, or is under common control with such person; (C) an employer, officer, director, partner, franchisor or franchisee of such person; or (D) anyone who has an agreement, arrangement or understanding, with such person, the purpose or substantial effect of which is to enable the person in a position to refer settlement business to benefit financially from the referrals of such business.

12 U.S.C. § 2602(8).

Using the definitions contained in Division of Insurance regulation _____ and RESPA, respond to the following questions. Submit your response to the Division within seven (7) business days of the date of this letter. An officer of the company must attest to the accuracy of the responses and sign the responses. Failure to supply complete, signed responses within the seven (7) day time frame subjects your company

to monetary or other penalties pursuant to Division of Insurance regulation _____.

Please note that in accordance with § _____, all working papers, claim files, recorded information and documents disclosed to the Division will be given confidential treatment until the informal investigation is concluded. If documentation submitted to the Division is additionally protected from disclosure under the exceptions to the _____ Open Records Act of § _____, you must mark each document as confidential. In addition, you must submit an index of the documents that describes the content of each document, the basis for the claim of confidentiality and the supporting rationale for the claim. This index must accompany the documentation.

Finally, please be advised that you may or may not receive further correspondence from the Division concerning AfBAs, regardless of how you respond to the following question.

Is the title entity to which this letter is addressed, or any of its affiliates or associates, an affiliated business arrangement as defined by Division of Insurance regulation _____ or RESPA? Please mark the appropriate response:

YES NO

As an officer of the company who is authorized to sign on behalf of the company, I do hereby attest to the accuracy of the above responses.

Company Name (as licensed)

Company Officer (print full name)

Title

Signature of Company Officer

Date

Please return this entire letter with complete, signed response to:

_____ *Division of Insurance*

Scan and e-mail to:

or

Thank you for your cooperation and prompt response.

Very truly yours,

L. Example Title Interrogatory

Affiliated Business Arrangements Interrogatories

The following terms, definitions and law shall apply when answering all questions:

State Law Definitions:

“Affiliate” means

“Affiliated Business Arrangements”

See _____ Division of Insurance Regulation _____.

“Settlement producer”

“Title entity”

“Title insurance business”

Federal Law Definitions:

In addition to enforcing state laws, state insurance commissioners are authorized to enjoin violations of the federal Real Estate Settlement Procedures Act (RESPA). The following RESPA definitions shall also apply when answering these questions:

“Affiliate Relationship” means the relationship among business entities where one entity has effective control over the other by virtue of a partnership or other agreement or is under common control with the other by a third entity or where an entity is a corporation related to another corporation as parent to subsidiary by an identity of stock ownership. See 24 C.F.R. § 3500.15(c)(2).

“Affiliated Business Arrangement”

(A)n arrangement in which (A) a person who is in a position to refer business incident to or a part of a real estate settlement service involving a federally-related mortgage loan, or an associate of such person, has either an affiliate relationship with or a direct or beneficial ownership interest of more than 1 percent in a provider of settlement services; and (B) either of such persons directly or indirectly refers such business to that provider or affirmatively influences the selection of that provider.

See 12 U.S.C. § 2602(7).

“Associate”

(M)means one who has one or more of the following relationships with a person in a position to refer settlement business: (A) a spouse, parent or child of such person; (B) a corporation or business entity that controls, is controlled by, or is under common control with such person; (C) an employer, officer, director, partner, franchisor or franchisee of such person; or (D) anyone who has an agreement,

arrangement or understanding, with such person, the purpose or substantial effect of which is to enable the person in a position to refer settlement business to benefit financially from the referrals of such business.

See 12 U.S.C. § 2602(8).

“Beneficial ownership” means the effective ownership of an interest in a provider of settlement services or the right to use and control the ownership interest involved even though legal ownership or title may be held in another person's name. See 24 C.F.R. § 3500.15(c)(3).

Please submit detailed written responses to the following questions along with the requested documentation to the Division within twenty (20) calendar days of the date of this letter. An officer of the company must attest to the accuracy of the responses and sign the responses. Failure to supply complete, signed responses within the twenty (20) day time frame subjects your company to monetary or other penalties pursuant to _____ Division of Insurance Regulation ____.

Please note that in accordance with § _____ (state law cite), all working papers, claim files, recorded information and documents disclosed to the Division will be given confidential treatment until the informal investigation is concluded. If documentation submitted to the Division is additionally protected from disclosure under the exceptions to the _____ Open Records Act., you must mark each document as confidential. In addition, you must submit an index of the documents that describes the content of each document, the basis for the claim of confidentiality and the supporting rationale for the claim. This index must accompany the documentation.

For each of the following questions, please be sure to include all relevant dates and provide full and complete copies of all relevant written documents to the Division of Insurance with your responses.

Identify any and all AfBAs that exist or have existed between and among the title entity to which this letter is addressed and any other title entities or settlement producers. Indicate the dates of creation of all such AfBAs and provide full and complete copies of all written documents relating to affiliation with all such AfBAs to the _____ Division of Insurance with your responses.

If no such AfBAs exist or have existed between and among your title entity and any other title entities or settlement producers, please indicate this fact and you do not need to answer the remaining questions. If you are unsure whether AfBAs exist or have existed, please respond to the following questions.

Explain in detail how and when the title entity to which this letter is addressed was initially capitalized and state the net worth for each year from January 1, 2000, to the present, explaining how this figure was derived. Respond to the following:

Provide a list of the names, addresses and occupations of all persons who contributed initial capital to the title entity to which this letter is addressed. Include the amount of capital obtained from each source and the respective capitalization ratios.

For each identified person, indicate whether this person took out a loan to cover any part of his/her contribution to the initial capital of the title entity to which this letter is addressed. Indicate the dollar amount and source of the loan.

For each identified person, state whether the title entity to which this letter is addressed has or has ever had any loan agreements with the identified person. Indicate the dates of all such loan agreements and provide full and complete copies of all written documents relating to all such loan agreements to the Division of Insurance with your responses.

Provide full and complete copies of any and all financial pro forma statements prepared by or for the title entity to which this letter is addressed. Indicate the date(s) on which each financial pro forma statement was prepared.

For each financial pro forma statement provided, explain in detail the reason(s) the financial pro forma statement was prepared.

For each financial pro forma statement provided, identify all persons who were involved in the preparation of the financial pro forma statement.

Has the title entity to which this letter is addressed ever owned or been owned, in whole or in part, by one or more settlement producers? If so, respond to the following:

Provide a list of the names, addresses and occupations of any and all settlement producers who have, in whole or in part, owned or been owned by the title entity to which this letter is addressed.

For each identified settlement producer, state the commencement date of the ownership arrangement(s) between the settlement producer and the title entity to which this letter is addressed. Provide full and complete copies of all written documents relating to the commencement of the ownership arrangement(s).

For each identified settlement producer, state the termination date of the ownership arrangement(s) between the settlement producer and the title entity to which this letter is addressed. Provide full and complete copies of all written documents relating to the termination of the ownership arrangement(s).

For each identified settlement producer whose ownership arrangement(s) with the title entity to which this letter is addressed was terminated or otherwise extinguished, state the reason(s) for the termination of the ownership arrangement(s) on the identified date(s). Provide full and complete copies of all written documents substantiating the reason(s) for the termination of the ownership arrangement(s).

For each identified settlement producer, indicate whether the ownership arrangement(s) between the settlement producer and the title entity to which this letter is addressed was adjusted or changed in any way. Indicate the date(s) on which the identified ownership arrangement(s) was adjusted or changed and provide full and complete copies of all written documents relating to any adjustments or changes that were made in the ownership arrangement(s).

For each identified settlement producer whose ownership arrangement(s) with the title entity to which this letter is addressed was adjusted or changed, state the reason(s) for the adjustment or change in the ownership arrangement(s) on the identified date(s). Provide complete copies of any and all written documents substantiating the identified reasons for the adjustments or changes in the ownership arrangement(s).

Provide a complete list of all employees who are currently or have ever been employed by the title entity to which this letter is addressed and indicate their dates of employment. Respond to the following:

Provide a complete list of the names and job titles of all employees of the title entity to which this letter is addressed.

For each identified employee, identify any and all affiliated or associated businesses for which he/she performs services.

For each identified employee, identify any and all unaffiliated businesses for which he/she performs services.

Explain the proportion of time allotted by each such employee to each affiliated and/or unaffiliated business as a percentage of 100 percent.

Provide a complete list of the names and job titles of all employees who are not full-time employees of the title entity to which this letter is addressed.

For each identified part-time employee, identify any and all affiliated or associated businesses for which he/she performs services.

For each identified part-time employee, identify any and all unaffiliated businesses for which he/she performs services.

Explain the proportion of time allotted by each such employee to each affiliated and/or unaffiliated business as a percentage of 100 percent.

Explain in detail the specific job functions performed by each identified employee.

Explain in detail all services provided by the title entity to which this letter is addressed that have not already been identified as being performed by the identified employees of the title entity to which this letter is addressed.

Identify all employment-related licenses held by each identified person; e.g. title insurance producer, real estate agent, attorney, etc.

Provide full and complete copies of all 1096 (Annual Summary and Transmittal of U.S. Information Returns) forms filed with the IRS by or for the title entity to which this letter is addressed.

Provide full and complete copies of all Unemployment Insurance Quarterly Wage and Tax Reports filed with the State of _____ by or for the title entity to which this letter is addressed.

Provide a list of the names and job titles of all persons not listed above who manage or have ever managed the business affairs of the title entity to which this letter is addressed and indicate their dates of employment.

Respond to the following:

Describe when, how and by whom each identified person is compensated.

Describe the job-related duties performed by each identified person.

Identify any and all affiliated or associated businesses for which each identified person performs or has performed services, and describe those services.

Identify any and all unaffiliated businesses for which each identified person performs or has performed services, and describe those services.

Does the title entity to which this letter is addressed perform any of the following core title services: (1) title searches, (2) title examinations; (3) abstracts; (4) title evaluations to determine insurability; (5) prepare and/or issue title commitments and/or title policies; (6) maintain policy records; (7) receive premiums; (8) closing and settlement services; (9) solicit and negotiate for the issuance of your title commitments; (10) maintain escrow accounts? If so, please respond to the following for *each* of the above core title services:

Provide a list of the names and job titles of all persons who have performed each core title service for the title entity to which this letter is addressed from January 1, 2000, to the present.

For each identified person, state the number of each core title service performed per year by that person for the title entity to which this letter is addressed from January 1, 2000, to the present. In addition, state this number as a percentage of the total number of each core title service performed per year by the title entity to which this letter is addressed.

For each identified person, state the name of any and all employers of that person.

For each identified employer, state whether that employer is an affiliated or associated business.

For each identified employer, state whether the employer is a settlement producer and describe how they meet this definition as described in _____ Division of Insurance Regulation ____.

For each identified person, describe in detail the specific activity or activities performed to accomplish the identified core title services.

For each identified person, state the name of the business that appears on each person's paycheck and/or paystub.

Has the title entity to which this letter is addressed ever contracted out any part of its work relating to the performance of title services? If so, please respond to the following:

Provide a list of all persons to whom the title entity to which this letter is addressed has contracted out any part of its work relating to the performance of title services.

Identify all licensed producers who conduct or have conducted title insurance business for the title entity to which this letter is addressed. For each identified licensed producer, indicate the dates that the licensed producer conducted business for your title entity.

Identify all underwriters for whom the title entity to which this letter is addressed is or has been authorized to conduct title insurance business. For each identified underwriter, indicate the dates that your title entity was authorized to conduct title insurance business for the underwriter and provide full and complete copies of all underwriting agreements to the Division of Insurance with your responses.

For each identified person, state whether that person is or was an affiliate or associate of the title entity to which this letter is addressed.

For each identified person, state whether that person is or was a settlement producer, and describe how they meet this definition as described in _____ Division of Insurance Regulation _____.

Identify any and all agreements, written or oral, that the title entity to which this letter is addressed has made relating to the contracting out of any part of its work relating to the performance of title services. Indicate the date on which each agreement was made and provide full and complete copies of all such written agreements.

Identify any and all payments that the title entity to which this letter is addressed has made or received for the contracting out of any part of its work relating to the performance of title services. Indicate the date on which each payment was made and provide full and complete copies of all written documents relating to all such payments.

Has the title entity to which this letter is addressed ever rented office space, facilities, items or services *to or from* any other title entities or settlement producers? If so, respond to the following:

Describe in detail all rented spaces, facilities, items or services. Indicate the date(s) for which each identified space, facility, item or service was rented and provide full and complete copies of all written documents relating to all such rental agreements.

State the amount of rent paid for each identified space, facility, item or service and explain how the identified amount was derived.

State the name of the person(s) from whom each identified space, facility, item or service was rented.

Are any of the persons identified affiliates or associates of the title entity to which this letter is addressed? If so, please identify their affiliations or associations.

Are any of the identified persons settlement producers, as defined in regulation ____? If yes, please identify in what capacity they are settlement producers.

Respond to the following questions concerning (1) affiliated settlement producers; (2) affiliated title entities; (3) unaffiliated settlement producers; and (4) unaffiliated title entities:

Since January 1, 2000, has the title entity to which this letter is addressed attempted to obtain business from one or more settlement producers and/or title entities affiliated or associated with the title entity to which this letter is addressed? If so, respond to the following:

Provide a list of all affiliated settlement producers and/or title entities that the title entity to which this letter is addressed has attempted to obtain business from since January 1, 2000.

For each identified affiliated settlement producer and/or title entities, describe in detail any and all marketing or advertising used from January 1, 2000, to the present by the title entity to which this letter is addressed in its attempt to obtain business from the affiliated settlement producer.

For each identified affiliated settlement producer and/or title entities, describe in detail any and all marketing or advertising agreements made with the affiliated settlement producer from January 1, 2000, to the present in its attempt to obtain business from the affiliated settlement producer.

Include all relevant dates and copies of all related documents.

Since January 1, 2000, has the title entity to which this letter is addressed received business from one or more settlement producers and/or title entities affiliated or associated with the title entity to which this letter is addressed? If so, respond to the following:

Provide a list of the names and addresses of all affiliated settlement producers and/or title entities that the title entity to which this letter is addressed has received business from since January 1, 2000.

For each identified affiliated settlement producer and/or title entities, indicate both the total number of customers and the total dollar amount of business received from the affiliated settlement producer and/or title entities from January 1, 2000, to the present.

Include all relevant dates and copies of all related documents.

Since January 1, 2000, has the title entity to which this letter is addressed sent business to one or more settlement producers and/or title entities affiliated or associated with the title entity to which this letter is addressed? If so, respond to the following:

Provide a list of the names and addresses of all affiliated settlement producers and/or title entities to which the title entity to which this letter is addressed has sent business since January 1, 2000.

For each identified affiliated settlement producer and/or title entities, indicate both the total number of customers and the total dollar amount of business sent to the affiliated settlement producer and/or title entities from January 1, 2000, to the present.

Include all relevant dates and copies of all related documents.

Does a settlement producer who refers business to the title entity to which this letter is addressed receive any services or products at a below market or discounted rate from an affiliate of the entity to which this letter is addressed?

Provide a list of the names and addresses of all settlement producers and affiliates of the entity to which this letter is addressed who receive or give services or products at a below market or discounted rate, as well as identification of which services or products are provided.

Identify all relevant documentation, including documentation consulted to prepare your responses. In addition, you may provide any other documentation, including a position statement, which you feel is relevant to this inquiry.

Please attach the following attestation form to the back of your written responses. Electronic answers will NOT be accepted. Please mail or hand-deliver your written responses and supporting documents to:

_____ Division of Insurance

Please direct any inquiries concerning the above questions to:

Attn:

As an officer of the company to which this letter is addressed, who is authorized to sign on behalf of the company, I do hereby attest to the accuracy of the above responses.

Company Name (as licensed)

Company Address

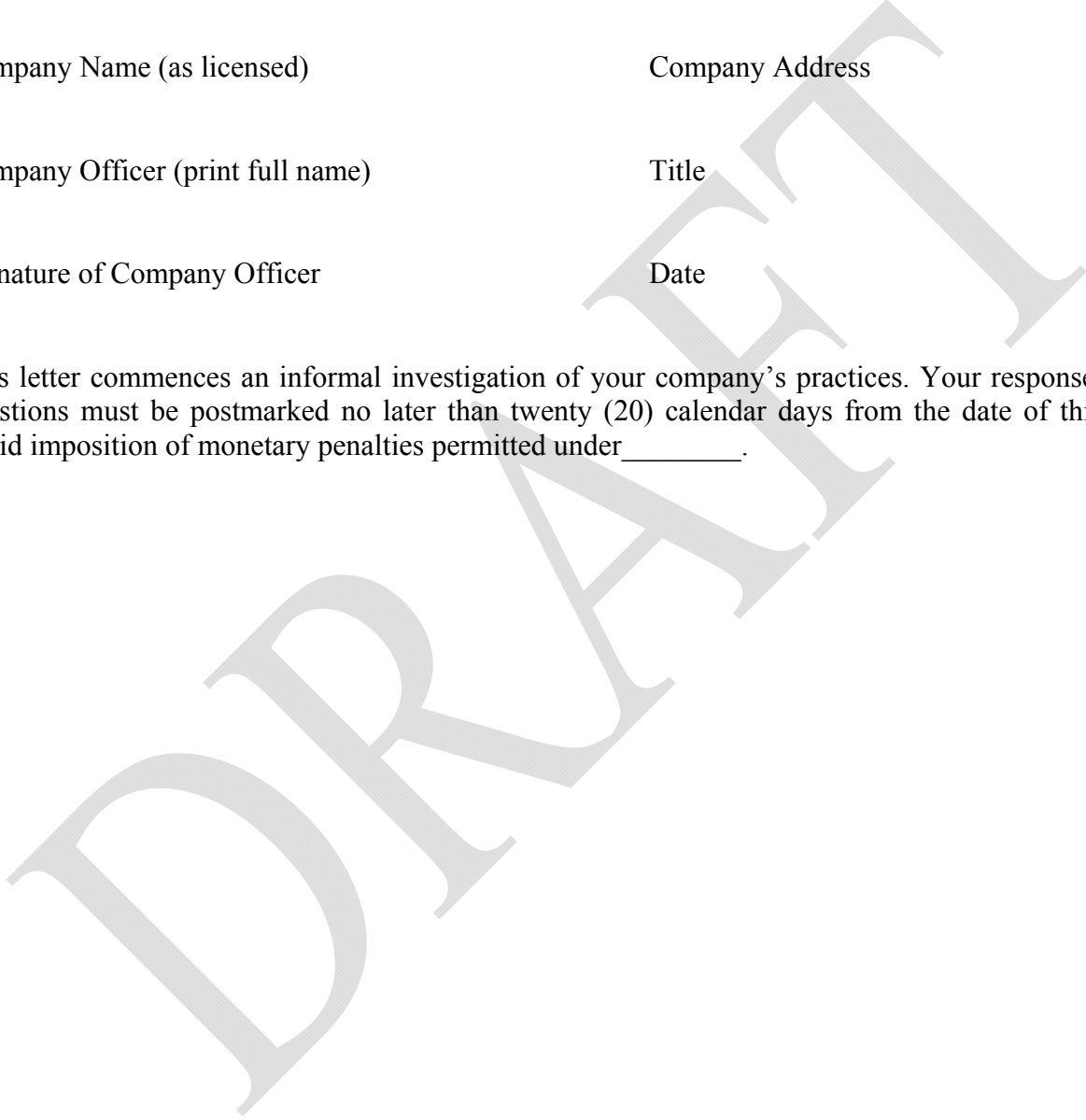
Company Officer (print full name)

Title

Signature of Company Officer

Date

This letter commences an informal investigation of your company’s practices. Your responses to these questions must be postmarked no later than twenty (20) calendar days from the date of this letter to avoid imposition of monetary penalties permitted under _____.



M. Sample Checklist

TITLE INSURANCE COMPANY CHECKLIST OF EXAMINATION REQUIREMENTS

All documents, lists and reference materials must be prepared for the period under examination and be ready at the commencement of the examination. If there were any substantive changes during the period under examination—i.e. a rate change or substantive underwriting rule change—your documents must so note and specifically describe how this change was implemented. Whenever possible, please supply the requested information in electronic format.

ADDITIONAL REQUESTS FOR INFORMATION MAY BE MADE BY THE EXAMINERS AT ANY TIME DURING THE EXAMINATION PROCESS.

1. Provide a brief narrative history of its business in general and specifically in (state). Include, at a minimum, the state(s) in which the company is licensed to do business, when the company was licensed in (state), premium writings as of the last day of the examination period for the line of business being examined and any other historically significant detail pertinent to (state). Provide an annual statement for the period(s) under examination.
2. Identify all internal audits performed by the company from the beginning date of the examination period to the present and provide a copy of same.
3. Provide a specimen of each policy and endorsement form in use during the examination period; include samples of manuscripted endorsements when applicable. Prepare a copy of all title insurance rate filings applicable to the period under examination and stamped by the (state) Division of Insurance. Provide a schedule of fees and charges for closing and settlement services, which has been stamped by the (state) Division of Insurance.
4. Provide a copy of the company's antifraud plan, if required by statute.
5. If the company possesses its own title plant, provide a detailed explanation of the company's procedures for the maintenance of this title plant.
6. Provide a copy of the underwriting rules, manual, guidelines, memoranda and directives and procedures manuals applicable to (state) business written during the period under examination.
7. Provide a copy of the (state) claims manual, guidelines, memoranda, directives and procedures for the processing of claims during the period under examination.
8. Provide a copy of all promotional and advertising materials utilized by the company or its agents during the period of examination.
9. Provide a list of all promotional and advertising activities—including, but not limited to, products, services, seminars, conventions, gifts and prizes—utilized by the company or its agents during the period of examination. Outline any incentive programs available to realtors, lenders, builders, et al., provided by the company or its agents during the period of examination.
10. Provide a list of policies issued during the period under examination. Include at least the policy number, effective date, named insured, named lender/mortgagee, amount of coverage and premium.

11. Provide a list of claims made during the period under examination. Include at least the claim number, named insured, date claim made and status; i.e., open/amount reserved and closed/amount paid.
12. Provide a list of all affiliated entities.
13. Provide a list of all disbursements pertaining to advertising, sales and marketing and promotional activities.

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