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**IDAPA 18
TITLE 01
CHAPTER 39**

18.01.39 – REBATES AND ILLEGAL INDUCEMENTS IN TITLE INSURANCE BUSINESS

000. LEGAL AUTHORITY.

This Rule is promulgated pursuant to the general rule making authority in Idaho Code, Sections 41-211, to aid in the effectuation of Sections 41-1314 and 41-2708, Idaho Code. (5-8-09)

001. TITLE AND SCOPE.

01. Title. The Title of this chapter is IDAPA 18.01.39, “Rebates and Illegal Inducements in Title Insurance Business.” (5-8-09)

02. Application of Rule. The provisions of this Rule shall apply to all title insurers and title insurance agents. This Rule does not limit the Director’s authority to determine that other title insurance practices constitute violations of Idaho Code Sections 41-1314 and 41-2708. (5-8-09)

03. Purpose. The purpose of this Rule is to supplement the provisions of Chapter 13 and Chapter 27, Title 41, Idaho Code, which pertain to illegal rebates and inducements in the insurance business, and particularly in the title business; to ensure that the consumers of title industry products and services have access to a viable and competitive marketplace. (5-8-09)

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements which pertain to the interpretation of the rules of the chapter, or to the documentation of compliance with the rules of this chapter. These documents will be available for public inspection and copying at cost in the main office and each regional or district office of this agency. (5-8-09)

003. ADMINISTRATIVE APPEALS.

There is no appeal to the Attorney General from application of this Rule. All such appeals must be instituted by written demand for a hearing before the Director of Insurance, Section 41-232, Idaho Code. Further appeal from the Director’s decision can be taken to district court, pursuant to Sections 67-5270, Idaho Code. (5-8-09)

004. INCORPORATION BY REFERENCE.

No documents have been incorporated by reference into these rules. (5-8-09)

005. OFFICE – OFFICE HOURS – MAILING ADDRESS, STREET ADDRESS AND WEB ADDRESS.

01. Office Hours. The Department of Insurance is open from 8 a.m. to 5 p.m. except Saturday, Sunday and legal holidays. (5-8-09)

02. Mailing Address. The department’s mailing address is: Idaho Department of Insurance, P.O. Box 83720, Boise, ID 83720-0043. (5-8-09)

03. Street Address. The principal place of business is 700 West State Street, 3rd Floor, Boise, ID 83720-0043. (5-8-09)

04. Web Site Address. The department’s website is <http://www.doi.idaho.gov>. (5-8-09)

006. PUBLIC RECORDS ACT COMPLIANCE.

Any records associated with these rules are subject to the provisions of the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code. (5-8-09)

007. -- 009. (RESERVED)

010. DEFINITIONS.

All terms defined in Chapters 1, 13, and 27, Title 41 Idaho Code, which are used in this rule shall have the same meaning as used in those chapters. (5-8-09)

01. Applicant. Applicant is a party to a real estate transaction who may be the buyer, seller and/or a proposed or named insured on a title commitment, policy, guaranty or other title insurance product. (5-8-09)

02. Financial Interest. Financial Interest means any interest that entitles the holder in any manner to Two and one-half percent (2.5%) or more of the profits or net worth of the title entity in which the interest is held. (5-8-09)

03. Producer of Title Business. Producer of title business includes any person engaged in this state in the trade, business, occupation or profession of: (5-8-09)

a. Buying or selling interest in real property; or (5-8-09)

b. Making loans by interest in real property; and (5-8-09)

c. Shall include but not be limited to real estate agents, real estate brokers, mortgage brokers, lending or financial institutions, builders, attorneys, developers, subdividers, auctioneers engaged in the sale of real property, consumers, and the employees, agents, representatives, or solicitors of any of the foregoing; and (5-8-09)

d. Shall include any legal entity whose ownership is, directly or indirectly, comprised fifty-one percent (51%) or more by entities or individuals described in Paragraph 010.03.c. of this rule. (5-8-09)

04. Thing(s) of Value. Thing(s) of value means anything that has a monetary value and includes, but is not limited to, tangible objects, services, use of facilities, monetary advances, extension of lines of credit, creation of compensating balances, uncollected cancellation fees for issuance of title commitments, and all other forms of consideration. (5-8-09)

05. Title Entity. Title entity includes both title insurance agents and title insurers along with their employees, agents, or representatives. (5-8-09)

011. DISCLOSURE BY PRODUCER OF TITLE BUSINESS.

No title entity may accept any order for; issue a title commitment, guarantee, title insurance policy for; or provide services, including but not limited to escrow closing and foreclosure services, to; an applicant if it knows or has reason to believe that the applicant was referred by a producer of title business, where the producer of title business has a financial interest in the title entity to which the business is referred unless the producer of title business has disclosed to the applicant the financial interest of the producer of title business. The disclosure must be made in writing and contain the items required in Section 012 of this rule. (5-8-09)

012. DISCLOSURE REQUIREMENTS.

01. Disclosure Required By Section 011. Shall be provided to the applicant at the time the sell and/or purchase contract is entered into. A signed copy of the disclosure shall be maintained by the producer of title business and provided to the title entity prior to or simultaneously with, the placing or the order for a title insurance commitment or guarantee or escrow closing services. The title entity shall maintain a copy of said disclosure for a minimum period of five (5) years. (5-8-09)

02. Disclosure. Disclosure shall contain a heading, in bold face, all caps, type font 14 or higher that states: "NOTICE OF FINANCIAL INTEREST IN TITLE ENTITY BY PRODUCER OF TITLE BUSINESS." (5-8-09)

03. Statement. Disclosure shall contain the following statement in type 12 font or higher: "We call this interest to your attention for disclosure purposes. (Provide name of Producer of Title Business) has a financial interest in this title entity (provide title entity name). This financial interest may result in a conflict of interest in our representation of you. Accordingly, you are free to choose any other title entity which is licensed by the Idaho Department of Insurance in the county in which the property is located. A list of title insurers and title agents licensed

in the county in which the property is located may be found by contacting the Idaho Department of Insurance.”
(5-8-09)

04. Chooses to Have Transaction Served. Disclosure shall contain a statement that the Applicant has read the aforementioned disclosure and chooses to have their transaction served by the Title Entity referred by the Producer of Title Business.
(5-8-09)

05. Signature. Disclosure shall contain the signature of the applicant along with the date the signature was accomplished.
(5-8-09)

06. Other information the Director of the Department of Insurance may require. (5-8-09)

013. FINANCIAL INTEREST NOTICE.

01. Names and Addresses of All Producers. A title entity shall notify the Director of the Department of Insurance the names and addresses of all producers of title business that have a financial interest in the title entity, including the financial interest held by the producer of title business and the date the financial interest was acquired.
(5-8-09)

02. Financial Interest Notice. The title entity will provide the financial interest notice to the Director of the Department of Insurance prior to the granting of a title agent license and upon request for renewal of a title agent license.
(5-8-09)

014. UNLAWFUL INDUCEMENT OR REBATE.

01. Title Entity or Any Person Shall Not Except. Except as provided in Subsection 014.02 of this rule, a title entity or any person shall not except as otherwise authorized in Title 41, Idaho Code:
(5-8-09)

a. Give or accept a fee, or other thing of value pursuant to an agreement or understanding, express or implied, that title insurance business or escrow closing services will be referred to a title entity; or
(5-8-09)

b. Give or accept a portion, split or percentage of a charge made or received for title insurance business in connection with a transaction involving real property in this state.
(5-8-09)

02. A Presumption of Unlawful Inducement or Rebate. Arises if a producer of title business or any other person receives a thing of value from a title entity without the payment or exchange to the title entity of consideration with a similar fair market value. A title entity may pay a return on an investment, based on a percentage of a financial interest in that title entity if all the requirements of this rule are met.
(5-8-09)

015. SEVERABILITY.

If any provision of this Rule is for any reason held to be invalid, the remainder of the Rule shall not be affected thereby.
(5-8-09)

016. -- 999. (RESERVED)

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