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**IDAPA 18
TITLE 05
CHAPTER 02**

18.05.02 – TITLE INSURANCE AND TITLE INSURANCE AGENTS AND ESCROW OFFICERS

000. LEGAL AUTHORITY.

These rules are promulgated pursuant to authority granted by Chapter 27 of Title 41, Idaho Code, Chapter 52 of Title 67, Idaho Code, and Section 41-211, Idaho Code. (7-1-93)

001. TITLE AND SCOPE.

The purpose of these rules is to adopt with reference to title insurance and title insurance agents and escrow officers rules governing rates charged for various services and insurability on certain matters; rules governing procedural methods as to the way the title insurers, title insurance agents and their officers are to perform certain actions and rules governing actions of title insurance agents and employees acting as escrow agents. The purpose is to further protect consumers of title insurance industry products by ensuring that consumers are not injured by delivery of certain funds or documents (for recordation or otherwise) from an escrow without prior receipt of “collected funds” by the escrow agent and to preserve the financial stability of title insurers and title insurance agents. (7-1-93)

002. -- 003. (RESERVED)

004. PREMIUM RATES AND THEIR APPLICATION.

01. Schedule of Premium Rates. Each title insurer shall file its schedule of premium rates (including both the taxable risk portion and the service portion) for title insurance charged the public for all policies, which premium rates shall commence with the lowest rate and shall advance by one thousand dollars (\$1,000) increments. The rate schedule shall include owner’s, standard mortgagee and extended coverage mortgagee policies, and may include other rates. In addition, any charges made for special endorsements shall be listed and the type of policy to which applicable. Filed rates shall provide that where a preliminary report is issued, the order for the policy may be canceled prior to closing. The applicant may be required to pay a cancellation fee. The premium rates for policies shall only include title examination and issuance of title insurance which shall be deemed to include any preliminary report, commitment to insure, binder or similar report (herein collectively called preliminary report) and the policy subsequently issued thereon. If more than one (1) chain of title is involved, an additional charge shall be made for each additional chain. An additional chain is one involving property in a different block or section or under a different ownership within the last five (5) years. (3-28-18)

02. Issuing Binders, Commitments or Preliminary Reports. No title insurer or title insurance agent shall issue a title insurance binder, commitment or preliminary report without an order. (6-30-19)T

03. Amount of Owner's Policy. An owner’s policy shall be issued for not less than (a) the amount of the current sales price of the land and any existing improvements appurtenant thereto, or (b) if no sale is being made, the amount equal to the value of the land and any existing improvements at the time of the issuance of the policy. If improvements are contemplated, the amount may include the cost of such improvements immediately contemplated to be erected thereon with a following pending improvement clause set forth in Schedule B of said policy and the full premium collected, which clause reduces the policy amount to the extent the improvements are not completed. The amount of policies covering leasehold estates for a term of fifty years or more shall be for the full value of the land and existing improvements, and for less than fifty years shall be for an amount at the option of the insured based on (i) the total amount of the rentals payable for the primary term but not less than five (5) years, or (ii) the full value of the land and existing improvements together with any improvements immediately contemplated to be erected thereon. The amount of policies insuring contract purchasers shall be for the full value of the principal payments. Insurance of lesser estates shall be written for the amount of the value of the estate at the time the policy is issued. (7-1-93)

04. Amount of Mortgagee Policies. A mortgagee’s policy shall be for not less than the full principal debt of the loan insured and at insured’s request may include up to twenty percent (20%) in excess of the principal debt to cover interest, foreclosure costs, etc. Where the land covered represents only part of the security for the loan, the policy shall be written for the amount of the unencumbered value of the land or the amount of the loan, whichever is the lesser. (7-1-93)

05. Simultaneous Issuance of Owner's and Mortgagee's Policy. When an owner's policy and a mortgage policy covering identical land are simultaneously issued, the owner's policy shall bear the regular owner's rate. Premium for the mortgagee policy simultaneously issued may be for an amount less than the full mortgagee rate for the amount of insurance not in excess of the owner's policy. (7-1-93)

06. Double Sale and Reissue. No order will be held open to cover a double sale and the premium will be charged and the policy issued on each sale, unless the conveyance on resale is recorded at the same time as the original transaction. A title insurer may file an owner's reissue rate of not less than fifty percent (50%) of the basic rate which shall be applicable to any policy ordered within two (2) years of the effective date of a prior owner's or purchaser's policy naming applicant as the insured provided that the following conditions are met: (7-1-93)

a. The prior policy or a copy thereof is presented to the issuing company and shall be retained in the issuing company's file, or in the absence thereof, reasonable proof of issuance is provided the issuing company. (7-1-93)

b. The reissue premium shall be based on the schedule of fees in effect at the time of reissue. (7-1-93)

c. Increased liability is to be computed in accordance with the basic schedule of fees in the applicable brackets. (7-1-93)

07. Amount on Litigation and Foreclosure Reports. Where a preliminary report is made for an owner's policy to be issued after a quiet title action or after a foreclosure of contracts of sale, deeds of trust or mortgages, the premium charge shall be that on an owner's policy and the policy will be issued following the successful completion of the litigation or the foreclosure. A cancellation fee may be charged if the action is unsuccessful. Each such preliminary report shall bear on its face as the limit of liability of the insurer, the value upon which the premium charge is based. (3-28-18)

005. PROCEDURAL RULES AND DEFINITIONS.

01. 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. (6-30-19)T

a. 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. (6-30-19)T

b. 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. (6-30-19)T

c. Policy. Any contract or form of title insurance which prior to its issuance has been filed with the Director of Insurance. (7-1-93)

d. Preliminary Report. A binder of insurance, a commitment to insure, a preliminary report of title, and litigation reports including quiet title action, foreclosure actions of contracts of sale, deeds of trust or mortgages where a policy of title insurance will be issued on the successful completion thereof. There is excluded herefrom miscellaneous reports which do not insure title, such as judgment reports, lot book reports or property search reports which are governed by Subsection 005.02. (7-1-93)

e. Producer of Title Business. "Producer of title business" includes any person engaged in this state in the trade, business, occupation or profession of: (6-30-19)T

i. Buying or selling interest in real property; or ()

ii. Making loans secured by interest in real property; and ()

iii. 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 (6-30-19)T

iv. 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. (6-30-19)T

f. **Title Examination.** A search and examination of the title and a determination of insurability of the title in accordance with sound title underwriting practices. Such examination of the public records shall be made only for the purpose of determining insurability of the described property and shall not be a report on the condition of the record. (7-1-93)

g. **Issuance of a Policy.** The preparation, execution and delivery of a title insurance policy which is hereby deemed to be only a contract of insurance up to the face amount of such policy and in no way shall create a tort liability as to the condition of the record insured from. The same shall include any necessary investigation just prior to actual issuance of a policy to determine if there has been proper execution, acknowledgement and delivery of any conveyances, mortgage papers, and other title instruments which may be necessary for the issuance of a policy. It shall also include determination of the status of taxes based on the latest available information and a final search of the title and that all necessary papers have been filed for record. Issuance of the policy shall not include services which are essentially escrow or closing services, such as receiving and disbursing money, prorating insurance and taxes, etc., for which an escrow fee shall be charged. The issuer of the policy may specify requirements necessary for the issuance of the title insurance, but it is the responsibility of the applicant for the insurance to meet such requirements and the title insurance agent shall not act for the applicant to satisfy the same. It is not the responsibility of the policy issuer to cure defects of title or remove liens or encumbrances, nor to perform services extraneous to the issuance of the policy. Title insurers and title insurance agents in the issuance of title insurance policies shall not do any acts which constitute the practice of law and the premium shall not include the cost of legal services to be performed for the benefit of anyone other than the company. A title insurance agent who is also a licensed lawyer rendering any legal services in the transaction insured must render a separate legal billing therefor and the escrow fees shall not include such legal services. (7-1-93)

h. **Tract Indexes and Abstract Records.** See IDAPA 18.05.01, Rules of the Department of Insurance. The tract indexes and abstract records shall be maintained and posted to current date and shall include adequate maps that will enable a person working the title plant to locate a tract of land which is the subject of the title examination. (7-1-93)

02. Miscellaneous Reports. Where an insurer or its agent issues judgment reports, lot book reports or property search reports, each such report shall specifically contain the following statement: "This report is based on a search of our tract indexes of the county records. This is not a title or ownership report and no examination of the title to the property described has been made. For this reason, no liability beyond the amount paid for this report is assumed hereunder, and the company is not responsible beyond the amount paid for any errors and omissions contained herein." (7-1-93)

03. Special Exceptions. An insurer may insert such special exception(s) as shall develop from an examination of the title. A special exception shall in all cases specifically describe the item excepted to and shall not be general in terms. The printed provisions of a filed policy form, including exclusions from coverage, exceptions not insured against and stipulations and conditions shall not be deemed special exceptions. (7-1-93)

04. Liens and Encumbrances, Standards of Insurability and Insuring Around. The determination of insurability as to liens and encumbrances under Section 41-2708(1) and the risk prohibited under Section 41-2708(2), Idaho Code, intentionally omitting an outstanding enforceable recorded lien or encumbrance, are interpreted by the Insurance Director to mean: (7-1-93)

a. "Intentionally" omitting an outstanding enforceable recorded lien or encumbrance is the issuance of the policy with the intent to conceal information from any person by suppressing or withholding title information, the consequence of which could result in a monetary loss either to the title insurance company or to the insured under the policy or binder. (7-1-93)

b. "Outstanding enforceable recorded lien or encumbrance" and/or "determination of insurability" as

to possible liens and encumbrances shall not be construed as prohibiting an insurer from issuing a policy without taking exception to a specific recorded, inchoate, or death tax item when sound underwriting standards and practices allow insurance against the item. Defects of title are not regulated by this provision. Specifically, a policy may be issued without taking exception to the following items on the conditions set out: (7-1-93)

i. Where a lien securing an obligation, though not released of record, to the satisfaction of the insurer has been discharged and the insurer or its agent has documentary evidence in its file that the obligation has been paid in full. (7-1-93)

ii. Where funds are in escrow to pay said item and a recordable release in form for filing is available for recording in the ordinary course of business. (7-1-93)

iii. Where liens, in the opinion of counsel, are barred by the statute of limitations. (7-1-93)

iv. Where inchoate liens may arise from improvements to the described property and may have priority over a mortgage being insured and a sufficient indemnity as herein defined has been delivered to and accepted by the insurer, or sufficient funds, including short term treasury bills and notes, have been deposited with the insurer or its agent to assure ultimate payment and release of such liens; provided, an exception as to such inchoate liens shall be shown on the policy with a provision insuring against the enforcement thereof. Sufficient indemnity as used herein shall mean a direct obligation to pay such liens in an amount judged adequate by the insurer executed by a financial institution regulated by the state or federal government or executed by a responsible person as hereinafter defined. This subsection shall also apply to recorded liens being contested if the indemnity is one hundred and fifty percent (150%) of the claim and is by such financial institution or in said funds. (6-30-19)T

v. Where the insurer has previously issued a policy without taking exception to the specific item and is called upon to issue an additional policy where it is already obligated under such prior policy and where the new policy will not increase its liability or exposure; provided, an exception as to such item shall be shown on the policy with a provision insuring against the enforcement thereof. (7-1-93)

vi. When the mortgage policy issued insures validity and priority of a lien, the insurer shall not be required to itemize liens which are subordinate to the lien insured, whether by express subordination or operation of law, unless such subordinated matters must be shown to comply with a policy provision, or unless requested by the insured to do so; provided, when issuing a preliminary report, commitment or a binder for a mortgagee's policy all subordinate liens shall be shown but a statement may be made that they are subordinate. (7-1-93)

vii. With reference to federal estate taxes and state inheritance taxes which have not been paid, where the insurer has examined a balance sheet of the estate and determined more than adequate funds are on hand to pay such taxes, and the insurer has taken an indemnity from a responsible person protecting itself against such unpaid taxes, or where sufficient moneys or other securities to pay such taxes have been placed in escrow pending the payment thereof or pending receipt of waiver of lien from the taxing authority. (7-1-93)

viii. "Responsible person" is one (1), or more than one (1) if they are jointly and severally liable, each of whose current verified balance sheet upon examination is determined by the insurer to be sufficient for the purpose of the indemnity given. Verified copies of all statements shall be retained by the insurer or its agent. (7-1-93)

05. Mechanics' Liens, Prohibited Risk. Under the provisions of Section 41-2708, Idaho Code, the Insurance Director has determined under standards of insurability, prohibited risks and rebates, that under all forms of mortgage policies the risk insured shall not include unrecorded liens and encumbrances, including contractors', subcontractors' professional services, materialmen's and mechanics' liens, unless: (7-1-93)

a. The mortgage shall have been placed of record prior to commencement of any improvement on the premises and the insurer is satisfied that the mortgage and related documents with reference to such priority; or (7-1-93)

b. Unless the provisions of Subsections 005.04.b.ii., 005.04.b.iii. or 005.04.b.iv., and 005.04.b.viii. as applicable have been complied with; or (7-1-93)

c. Unless the insurer has satisfied itself and documented its file that construction has been completed and the time for filing liens has expired. (7-1-93)

06. Usury, Truth in Lending Disclosures. Protection against usury, or disclosures required in consumer credit protection acts, truth in lending acts, or similar acts imposing duties on lenders, do not constitute a part of the issuance of title insurance policies. Title insurers and their agents shall not prepare or pass judgment on documents as to usury nor on disclosure documents and notice of right of rescission documents required by any such acts or make any computations as required therein, in the issuance of title insurance policies; provided, an endorsement to a mortgage policy insuring that the loan is one by definition of the Truth in Lending Act exempt from rescission is permissible. Nothing herein shall prohibit such title insurers or their agents from performing closing or escrow services involving such matters when a proper fee is obtained therefor. (7-1-93)

07. Filing, Approval, Unique Contract or Rate. Whenever a title insurer is requested to insure a unique kind or class of risk for which a premium rate or form of policy or endorsement has not been filed, neither of which lends itself to an advance filing and determination of said rate or form, pursuant to Section 41-2706(4) such title insurer may make a written application to the Director of Insurance for approval of said special rate or form without complying with the filing notice and thirty (30) day waiting provisions of Section 41-2707 upon complying with the following requirements: (7-1-93)

a. The insurer shall not have agreed to the special rates nor agreed to issue the special policy or endorsement, prior to making an application to the Director of Insurance as herein set out. (7-1-93)

b. The insurer shall make a written application to the Director of Insurance, requesting approval of the applicable special rate or special insurance policy or endorsement, wherein the insurer shall set forth why the particular rate or policy or endorsement is unique as to the risk or form, that such item has or has not ever arisen in the past five (5) years to the knowledge of said insurer, and the circumstances if it has previously arisen in said period, and the circumstances which now arise which necessitate said rate, policy or endorsement and an analysis comparing said unique rate, policy or endorsement to the nearest comparable filed rate, policy or endorsement and justifying the difference on the basis of Section 41-2706(1) and (2). Such application shall have attached to it the proposed policy or endorsement form. The Director of Insurance shall have ten (10) working days after the date of receipt of such application to disapprove the same, and the filing shall be deemed effective if the same is not disapproved within such time. The burden is upon the insurer to make inquiry after the expiration after said ten (10) days to determine whether a disapproval has been made, whether or not mailed notice of such disapproval has not yet been received by said insurer. (7-1-93)

c. The provisions hereof are only applicable to rates, policies and endorsements, which by reason of the rarity of the event, or the peculiarity of the circumstances, do not lend themselves to a general advance determination and filing of said item. Applications under this rule and the applicable statute shall not be approved if it appears either that said application does not meet the standards of the statute or is such a deviation from the usual policy form or rate most nearly applicable thereto as to be an unsound underwriting practice or an inadequate premium. (7-1-93)

006. 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 007 of this rule. (6-30-19)T

007. DISCLOSURE REQUIREMENTS.

01. Disclosure Required By Section 006. 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. (6-30-19)T

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."

(6-30-19)T

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."

(6-30-19)T

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. The disclosure shall contain the signature of all applicants along with the date the signature(s) was accomplished.

(6-30-19)T

008. 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.

(6-30-19)T

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.

(6-30-19)T

009. -- 010. (RESERVED)

011. TITLE INSURANCE AGENTS AND EMPLOYEES ACTING AS ESCROW AGENTS.

01. Written Instructions. An escrow agent shall not accept funds or papers in escrow without a dated, written instruction signed by the parties or their authorized representatives adequate to administer the escrow account and without receiving at the time provided in the escrow instructions sufficient funds and documents to carry out terms of the escrow instructions. Funds and documents deposited shall be used only in accordance with such written instruction; and if additional specific instructions are needed, the agent shall obtain the consent of both parties or such representatives to the escrow or an order of a court of competent jurisdiction at the expense of the escrow parties.

(7-1-93)

02. Notice of Conflict of Interest. An escrow agent shall act without partiality to any of the parties to the escrow. An escrow agent may not close a transaction where he has, directly or indirectly, a monetary interest in the subject property either as buyer or seller. If an escrow agent has a business interest in the escrow transaction other than as escrow agent, the relationship or interest must be disclosed in the written escrow instructions. After noting such interest, an additional statement shall appear as follows: "We call this interest to your attention for disclosure purposes. This interest will not, in our opinion, prevent us from being a fair and impartial escrow agent in this transaction, but you are, nevertheless, free to request the transaction be closed by some other escrow agent." (7-1-93)

03. Closing Statement. On completion of an escrow transaction the agent shall deliver to each principal a written closing statement signed by the agent of each principal's account. The same shall show all receipts and disbursements and any charge made by and disbursements to the escrow agent shall be clearly noted. A copy shall be retained.

(7-1-93)

04. Control of Funds. An escrow agent shall maintain one or more "trust accounts" in a federally insured financial institution into which all escrow funds received shall be deposited and from which there shall be drawn escrow payments. No other funds shall be commingled with such trust account. Escrow fees shall not be drawn

until the escrow is completely ready to close in accordance with the escrow instructions and must be withdrawn not later than the day on which the final disbursements are made for the escrow closing. (7-1-93)

05. Escrow Accounting Procedures. An escrow agent shall maintain on a current basis (a) an escrow ledger with a separate numbered sheet for each escrow agreement and (b) an escrow liability control account. Disbursements shall be posted from checks or other vouchers and each item, not the total of items, must be entered. Escrow liability control account shall balance with the escrow ledger at all times and shall equal the balance of funds in the “trust accounts” for escrows at the bank. Checks may not be drawn against an escrow account without sufficient credit balance for the particular escrow existing at the time. Funds shall not be transferred between escrow agents except by writing checks and receipts which are charged and credited respectively to accounts with the reason noted and the authority therefor. All services must be performed and the escrow account ready to close before any service or escrow fees may be charged and drawn from an escrow account (unless an escrow is a long term collection, and fees are payable monthly or annually). The escrow funds will be placed in the “trust accounts” for escrows and no other funds commingled therewith. All entries in any escrow account shall be posted the date of the entry without regard of the date of posting, but all entries should be posted daily. (7-1-93)

06. Escrow Records. Each escrow agent shall maintain in each escrow transaction: (3-15-02)

a. Evidence of all funds received including copies of all instruments, which shall include prenumbered cash receipts, copies of cashier’s checks, wire transfer confirmations or evidence of unconditional payment of checks, as applicable; (3-15-02)

b. Complete evidence of all funds disbursed which shall include check stubs or check copies, and wire instructions for all disbursements as applicable; and (3-15-02)

c. A final ledger sheet for each escrow transaction listing all items received and disbursed. All records shall be made available for audit, inspection and examination by the Director upon demand, and all records shall be preserved for not less than six (6) years from the closing date of the escrow. (3-15-02)

07. Bond. Before a license shall be issued to a title insurance agent pursuant to Section 41-2710, Idaho Code, such agent must comply with the requirements for a bond for the title insurance agent, escrow officer and any of the employees of said agent thereof engaged in handling escrow accounts and funds or countersigning and issuing title insurance policies, except such employees whose duties are wholly clerical in relation thereto. Such bond need not be renewed each year, but may be in the form that continues from year to year until canceled. Such bond may be for more than one county if the title insurance agent is licensed to do business in more than one county, but the liability under such bond shall be limited to the amount per county as required by Section 41-2711, Idaho Code. Such bond shall be for the benefit of all persons who have suffered any loss because of the breach of the terms of said bond and shall be enforceable on finding of the Director of Insurance upon hearing that the terms of the bond have been violated. Deposits in Lieu of Bonds: In lieu of such bond, cash or securities as herein defined may be deposited with the Director of Insurance. The Director of Insurance does hereby approve the following securities which are eligible for deposit in place of the bond required: Cash in the form of a cashier’s check, any public obligation as defined in Section 41-707 and Section 41-708, Idaho Code, and the assignment of any savings deposits or certificates of deposit as defined in Section 41-720, Idaho Code. In each case, such deposit shall be accompanied by a statement that such deposit is made to meet the compliance of Section 41-2710, Idaho Code, and may be liquidated to meet the obligations of said section. Said cash or security in lieu of the bond shall be deposited with the director pursuant to Section 41-804, Idaho Code, except that the cash shall be deposited with the state treasurer for the account of the bond of said depositing agent. (7-1-93)

08. Cancellation of Bond -- Cancellation of License. A title insurance agent’s bond may provide for cancellation thereof upon notice of not less than thirty days to the Insurance Director and to the licensed agent. Upon such notice being received, the licensed title insurance agent must provide a new bond in place thereof before the cancellation of the current bond, and in the event of failure to do so, the license of the title insurance agent shall be deemed suspended on the date of the expiration of such bond, and until a replacement bond has been issued and delivered to the Director of Insurance. (7-1-93)

09. Disbursement of Funds or Documents From Escrow -- Requirement for Collected Funds. (7-1-93)

- a.** Definitions. (7-1-93)
- i. “Business Day” means a calendar day other than Saturday or Sunday, and also excluding most major holidays. If January 1, July 4, November 11, or December 25 fall on a Sunday, the next Monday is also excluded from the definition of a business day. (7-1-93)
- ii. “Collected Funds” means (a) cash (currency); (b) wired funds when unconditionally received by the escrow agent; (c) when identified as such, (1) cashier’s check; (2) certified check; or (3) teller’s check (official check) when any of the above are unconditionally received by the escrow agent; (d) U.S. Treasury checks, postal money orders, federal reserve bank checks, federal home loan bank checks, State of Idaho and local government checks, local or Idaho on-us checks, or local third party checks on the next business day after deposit; (e) local personal or corporate checks on the second business day after deposit; and (f) non-local State and government checks, non-local on-us checks, non-local personal or corporate checks or non-local third party checks on the fifth business day after deposit. For purposes of this section a deposit is considered made on (1) the same day the item is delivered in person to an employee of a federally insured financial institution, or (2) the first business day following an after business hours deposit of an item to a federally insured financial institution. (7-1-93)
- iii. “Cashier’s Check, Certified Check and Teller’s Check (Official Check)” as identified above in Subsection 011.10.a.ii. means “checks” issued by a federally insured financial institution. (7-1-93)
- iv. “Collection or Long-Term Escrow” means an escrow established for the purpose of receiving two (2) or more periodic payments over a total period of time after establishment in excess of thirty (30) days. (7-1-93)
- v. “Escrow” includes any agreement (express, implied in fact or implied at law) pursuant to which funds or documents are delivered to an escrow agent to be held by the escrow agent until the happening of a contingency or until the performance of a condition, and then delivered by the escrow agent to another or recorded by the escrow agent. (7-1-93)
- vi. “Escrow Agent” includes any person or entity described in Section 41-2704, Idaho Code, (and the rules promulgated thereunder), which accepts funds or documents for the purpose described in Subsection 011.10.a.v. (7-1-93)
- vii. “Incidental Expenses” means direct expenses that are the obligation of one or more of the parties to an escrow transaction but are not the purchaser’s principal obligation. Incidental expenses would include, but not be limited to, advances to cover unexpected recording fees and additional interest occasioned by delays in closings or miscalculations. (7-1-93)
- viii. “Local Checks” as identified above in Subsection 011.10.a.ii. means checks drawn against a federally insured financial institution located in the same check processing region as the title agent’s depository federally insured financial institution. (7-1-93)
- ix. “On-Us Checks” as identified above in Subsection 011.10.a.ii. means checks drawn against the same federally insured financial institution or branch as the title agent’s own depository federally insured financial institution. (7-1-93)
- b.** Requirement of Collected Funds. (7-1-93)
- i. Notwithstanding any agreement to the contrary, no disbursement of funds or delivery of documents from an escrow for recording or otherwise may be made unless the escrow contains a credit balance consisting of collected funds, other than funds of the escrow agent or its affiliates, sufficient to discharge all monetary conditions of the escrow. The requirement of collected funds does not apply to collection or long term escrows. (7-1-93)
- ii. Notwithstanding any other provision of Section 011, an escrow agent may advance its own funds in an aggregate amount not to exceed one thousand dollars (\$1000) to pay incidental expenses incurred with respect to the escrow. (7-1-93)

012. ESCROW FEES.

Title insurers and title insurance agents shall not charge less than the fees filed with the Department of Insurance for a specified escrow service, as such service is defined in the title insurer's or title insurance agent's filed schedule of fees. Each title insurer and title insurance agent shall file its schedule of escrow fees charged for all escrow and closing services rendered on a yearly basis due March 15 reflecting experience from the previous calendar year. Fees should include a title entity's basic rate, minimum rate and negotiable rate with respect to different types of closings and should not reflect credits of any kind with regard to different classifications of customers. The fee shall be based upon the full sales price in the event of a sale, or the amount of the loan in the event of a mortgage and shall not be less than the title entity's cost for providing that service. Fees for escrow and closing services shall not include preparation of instruments. Property in different ownerships always, and noncontiguous properties generally, are rated separately. Additional fees will be charged where the minimum fee is inadequate because of the unusual complications of the transactions. Fees may also be filed throughout the year as often as necessary as determined by the title entity. Fee filings in these instances shall be filed at least thirty (30) days prior to implementation of the fees. (6-30-19)T

013. -- 999. (RESERVED)

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