

IDAPA 18 – IDAHO DEPARTMENT OF INSURANCE

Company Activities

18.05.01 – Rules for Title Insurance Regulation

Who does this rule apply to?

This rule applies to all title insurers, agents, escrow officers, and employees acting as escrow agents.

What is the purpose of this rule?

The purpose of this rule defines certain fair-trade practice standards for title insurance, defines and clarifies Section 41-2702, Idaho Code, provides procedural rules for title insurers, agents; and escrow officers in order to protect consumers and preserve the financial stability of title insurers and agents.

What is the legal authority for the agency to promulgate this rule?

This rule implements the following statute(s) passed by the Idaho Legislature:

Insurance -

- [41-27, et seq., Idaho Code](#) – Title Insurance

The Department of Insurance:

- [Section 41-211, Idaho Code](#) – Rules

Trade Practices and Frauds:

- [Section 41-1314, Idaho Code](#) – Rebates – Illegal Inducements

Who do I contact for more information on this rule?

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18.05.01 – RULES FOR TITLE INSURANCE REGULATION

000. LEGAL AUTHORITY.

Title 41, Section 41-211, Idaho Code, to aid in the effectuation of Title 41, Chapter 27 and Section 41-1314, Idaho Code. (3-20-20)

001. TITLE AND SCOPE.

01. Title. IDAPA 18.05.01, “Rules for Title Insurance Regulation.” (3-20-20)

02. Purpose. This rule applies to all title insurers and title insurance agents and: (3-20-20)

a. Defines and clarifies the meaning of “a complete set of tract indexes or abstract records” as used in Section 41-2702, Idaho Code. (3-20-20)

b. Provides procedural rules as to the way title insurers, title insurance agents and escrow officers are to perform certain actions, charge rates for various services, and provide insurability on certain matters. (3-20-20)

c. Clarifies consumer protection on title insurance products. (3-20-20)

d. Preserves the financial stability of title insurers and title insurance agents. (3-20-20)

e. Defines certain fair trade practice standards for title insurance, the violation of which will constitute rebates and/or illegal inducements by Sections 41-2708(3) and 41-1314, Idaho Code. This rule does not limit the Director's authority to determine that other title insurance trade practices constitute violations of Title 41, Chapter 27 and 41-1314, Idaho Code. (3-20-20)

002. -- 009. (RESERVED)

010. DEFINITIONS.

All terms defined in Title 41, Chapters 1, 13, and 27, Idaho Code, which are used in this rule will have the same meaning as used in those chapters. (3-20-20)

01. Applicant. 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. (3-20-20)

02. Financial Interest. 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. (3-20-20)

03. Policy. Any contract or form of title insurance which prior to its issuance has been filed with the Director of Insurance. (3-20-20)

04. 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. Excluded are miscellaneous reports which do not insure title, such as judgment reports, lot book reports or property search reports which are governed by Subsection 012.01. (3-20-20)

05. Producer of Title Business. Includes any person engaged in this state in the trade, business, occupation or profession of: (3-20-20)

a. Buying or selling interest in real property; or (3-20-20)

b. Making loans secured by interest in real property; and (3-20-20)

c. May include but not be limited to real estate agents, real estate brokers, mortgage brokers, lending or financial institutions, builders, attorneys, developers, sub-dividers, auctioneers engaged in the sale of real property, consumers, and the employees, agents, representatives, or solicitors of any of the foregoing; and (3-20-20)

d. Will include any legal entity whose ownership is, directly or indirectly, comprised fifty-one percent (51%) or more by entities or individuals described in Paragraph 010.05.c of this rule. (3-20-20)

06. 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 will be made only for the purpose of determining insurability of the described property and not be a report on the condition of the record. (3-20-20)

07. Issuance of a Policy. The preparation, execution and delivery of a title insurance policy which is deemed to be only a contract of insurance up to the face amount of such policy and will in no way create a tort liability as to the condition of the record insured from. The same will include any necessary investigation just prior to actual issuance of a policy to determine if there has been proper execution, acknowledgment and delivery of any conveyances, mortgage papers, and other title instruments which may be necessary for the issuance of a policy. It will 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 will 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 will 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 to meet such requirements and the title insurance agent will 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. Title insurers and title insurance agents issuing title insurance policies will not do any acts which constitute the practice of law and the premium will 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 will render a separate legal billing and the escrow fees will not include such legal services. (3-20-20)

08. Self-Promotional. A promotional function conducted by a single entity or a promotional item intended for distribution by a single entity. All benefits from the promotional function or item will accrue to the entity promoting itself. (3-20-20)

09. Items of Value. 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, and all other forms of consideration. (3-20-20)

10. Trade Association. An association of persons, a majority of whom are producers of title business, or persons whose primary activity involves real property. (3-20-20)

12. Title Entity. Includes both title insurance agents and title insurers and their employees, agents, or representatives. (3-20-20)

13. Definitions Pertaining To Collected Funds: (3-20-20)

a. 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. (3-20-20)

b. Collected Funds means (i) cash (currency); (ii) wired funds when unconditionally received by the escrow agent; (iii) 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; (iv) 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; (v) local personal or corporate checks on the second business day after deposit; and (vi) 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. (3-20-20)

c. Cashier's Check, Certified Check and Teller's Check (Official Check) as identified above in Subsection 010.13.b. means checks issued by a federally insured financial institution. (3-20-20)

d. Local Checks: 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. (3-20-20)

e. On-us checks: Checks drawn against the same federally insured financial institution or branch as the title agent's own depository federally insured financial institution. (3-20-20)

f. 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. (3-20-20)

g. Escrow includes any agreement (express, implied in fact or at law) pursuant to which funds or documents are delivered to an escrow agent for holding 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. (3-20-20)

h. 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 010.13.g. (3-20-20)

i. Incidental Expenses: 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 caused by delays in closings or miscalculations. (3-20-20)

011. TRACT INDEXES OR ABSTRACT RECORDS.

For clarification and guidance, the following is considered to be the correct definition or meaning of "a complete set of tract indexes or abstract records" as used in Section 41-2702, Idaho Code: A set of indexes from which the record ownership and condition of title to all land within a particular county can be traced and ascertained. Tract indexes and abstract records will be maintained and posted to current date and will include adequate maps that will enable a person working the title plant to locate a tract of land that is the subject of the title examination. The basic component parts of such a set of indexes are: (3-20-20)

01. Basic Component Parts. An index or indexes, to be complete from the inception of title from the United States of America, in which the reference is to geographic subdivisions of land, classified according to legal description, (as distinguished from an index or indexes in which the reference is to the name of the title holder, commonly called a grantor-grantee index) wherein notations of or references to: (3-20-20)

a. All filed or recorded instruments legally affecting title to particularly described parcels of real property and which impart constructive notice under the recording laws; and (3-20-20)

b. All judicial proceedings in the particular county legally affecting title to particularly described parcels of real property are posted, filed, entered or otherwise included in that part of the indexing system which designates the particular parcel of real property; provided, no reference need be made in such index to any judicial proceeding which is referred to or noted in the name index defined in Subsection 011.02 of these rules. (3-20-20)

c. No requirement is made for taxes and assessments, water or otherwise, or for water and mineral rights, land use regulations, and zoning ordinances to be made a part of the plant records. (3-20-20)

02. Name Index or Indexes. A name index or indexes wherein notations of or references to all instruments, proceedings and other matters of record in the particular county which legally affects or may legally affect title to all real property (as distinguished from particularly described parcels of real property) of the person, partnership, corporation or other entity named and affected, including guardianships, absentee, bankruptcies, receiverships, divorces and mental illness matters, if available, are posted, filed, entered or otherwise included in that part of the indexing system which designates the same. (3-20-20)

03. Index Maintenance. The indexes prescribed in Subsection 011.01 may be maintained in bound books, looseleaf books, jackets or folders, on card files, or in any other form or system, whether manual, mechanical, electronic or otherwise; or in any combination of such forms or systems. (7-1-93)

04. Subdivision or Refinement. The extent to which the prescribed indexes are subdivided or refined is dependent upon all relevant circumstances. The population of the particular county, the extent to which land within

the particular county has been subdivided and passed into separate ownerships, and all other factors which are reasonably related to the purpose of the statutory requirements are entitled to consideration in such determination.

(7-1-93)

05. Discarding or Destroying. Any requirement established in this rule to the contrary notwithstanding, it is permissible to discard and destroy prior index books, jackets, folders, cards, photoprints or files pertaining to recorded instruments affecting title to particularly described parcels of real property once the titles to such particularly described parcels have been searched, examined and a policy of owner's title insurance issued thereon. The discarding and destruction of prescribed index components is applicable only when a permanent copy of the search notes, examiner's opinion and issued policy is retained in lieu of the discarded and destroyed index components.

(3-20-20)

012. PROCEDURAL RULES.

01. Miscellaneous Reports. Where an insurer or its agent issues judgment reports, lot book reports or property search reports, each such report will 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."

(3-20-20)

02. Special Exceptions. An insurer may insert such special exception(s) as may develop from an examination of the title. A special exception will specifically describe the item excepted to and will 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 will not be deemed special exceptions.

(3-20-20)

03. Liens and Encumbrances, Standards of Insurability and Insuring Around. The determination of insurability as to liens and encumbrances under Sections 41-2708(1) and the risk disallowed under 41-2708(2), Idaho Code, intentionally omitting an outstanding enforceable recorded lien or encumbrance, are interpreted by the insurance director to mean:

(3-20-20)

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.

(3-20-20)

b. "Outstanding enforceable recorded lien or encumbrance" and/or "determination of insurability" as to possible liens and encumbrances will not be construed as preventing 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:

(3-20-20)

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.

(3-20-20)

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.

(3-20-20)

iii. Where liens, in the opinion of counsel, are barred by the statute of limitations.

(3-20-20)

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 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 will be shown on the policy with a provision insuring against enforcement. Sufficient indemnity as used herein will 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 will 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. (3-20-20)

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 will be shown on the policy with a provision insuring against the enforcement thereof. (3-20-20)

vi. When the mortgage policy issued insures validity and priority of a lien, the insurer need not itemize liens which are subordinate to the lien insured, whether by express subordination or operation of law, unless such subordinated matters are 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 will be shown but a statement may be made that they are subordinate. (3-20-20)

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. (3-20-20)

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 will be retained by the insurer or its agent. (3-20-20)

04. Mechanics' Liens, Disallowed Risk. Under the provisions of Section 41-2708, Idaho Code, the Insurance Director has determined under standards of insurability, disallowed risks and rebates, that under all forms of mortgage policies the risk insured will not include unrecorded liens and encumbrances, including contractors', subcontractors' professional services, materialmen's and mechanics' liens, unless: (3-20-20)

a. The mortgage will 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 (3-20-20)

b. Unless the provisions of Subsections 012.03.b.ii., 012.03.b.iii. or 012.03.b.iv., and 012.03.b.viii. as applicable have been complied with; or (3-20-20)

c. Unless the insurer has satisfied itself and documented its file that construction has been completed and the time for filing liens has expired. (3-20-20)

05. Usury, Truth in Lending Disclosures. Protection against usury, or disclosures prescribed 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 will not prepare or pass judgment on documents as to usury nor on disclosure documents and notice of right of rescission documents demanded by any such acts or make any computations as essential 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 will prevent such title insurers or their agents from performing closing or escrow services involving such matters when a proper fee is obtained therefor. (3-20-20)

06. 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: (3-20-20)

a. The insurer has not agreed to the special rates, nor agreed to issue the special policy or

endorsement, prior to making an application to the Director of Insurance. (3-20-20)

b. The insurer will 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 will 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 Sections 41-2706(1) and (2), Idaho Code. Such application will have attached to it the proposed policy or endorsement form. The Director of Insurance will have ten (10) working days after the date of receipt of such application to disapprove the same, and the filing will 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. (3-20-20)

c. These provisions 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 will 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. (3-20-20)

013. PREMIUM RATES AND THEIR APPLICATION.

01. Schedule of Premium Rates. Each title insurer will 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 commence with the lowest rate and advance by one thousand dollars (\$1,000) increments. The rate schedule will include owner's, standard mortgagee and extended coverage mortgagee policies, and may include other rates. In addition, any charges made for special endorsements will be listed and the type of policy to which applicable. Filed rates will provide that where a preliminary report is issued, the order for the policy may be canceled prior to closing. The applicant may be requested to pay a cancellation fee. The premium rates for policies will only include title examination and issuance of title insurance which will 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 will 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. (3-20-20)

02. Issuing Binders, Commitments or Preliminary Reports. No title insurer or title insurance agent will issue a title insurance binder, commitment or preliminary report without an order. (3-20-20)

03. Amount of Owner's Policy. An owner's policy will 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 will be for the full value of the land and existing improvements, and for less than fifty years will be for an amount at the option of the insured based on either the total amount of the rentals payable for the primary term but not less than five (5) years, or 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 will be for the full value of the principal payments. Insurance of lesser estates will be written for the amount of the value of the estate at the time the policy is issued. (3-20-20)

04. Amount of Mortgagee Policies. A mortgagee's policy will 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 will be written for the amount of the unencumbered value of the land or the amount of the loan, whichever is the lesser. (3-20-20)

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 will 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. (3-20-20)

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 will 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: (3-20-20)

a. The prior policy or a copy thereof is presented to the issuing company and will be retained in the issuing company's file, or in the absence thereof, reasonable proof of issuance is provided the issuing company. (3-20-20)

b. The reissue premium will be based on the schedule of fees in effect at the time of reissue. (3-20-20)

c. Increased liability is to be computed in accordance with the basic schedule of fees in the applicable brackets. (3-20-20)

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 will 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 will bear on its face as the limit of liability of the insurer, the value upon which the premium charge is based. (3-20-20)

014. DISCLOSURE BY PRODUCER OF TITLE BUSINESS.

01. Disclosure of Financial Interest. No title entity may accept any order to 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 will be made in writing and contain the items prescribed in Subsection 014.02 of this rule. (3-20-20)

02. Disclosure Provided to Applicant. The disclosure will be provided to the applicant at the time the sale and/or purchase contract is entered into. A signed copy of the disclosure will 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 will maintain a copy of said disclosure for a minimum period of five (5) years. The disclosure will contain the following: (3-20-20)

a. 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." (3-20-20)

b. A 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." (3-20-20)

c. 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 will contain the signature of all applicants along with the date the signature(s) was accomplished. (3-20-20)

015. FINANCIAL INTEREST NOTICE.

01. Financial Interest Notice to Director. A title entity will notify the Director of the Department 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. (3-20-20)

02. Notice Filing. The title entity will provide the financial interest notice to the Director of the Department prior to the granting of a title agent license and upon request for renewal of a title agent license. (3-20-20)

016. – 020. (RESERVED)

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

01. Written Instructions. An escrow agent will not accept funds or papers into escrow without dated written instructions signed by the parties or their authorized representatives adequate to administer the escrow account and without receiving, at the time provided with the escrow instructions, sufficient funds and documents to carry out terms of the escrow instructions. Funds and documents deposited will be used only in accordance with such written instructions. If additional instructions are needed, the agent will obtain the consent of both parties, their representatives to the escrow or an order of a court of competent jurisdiction at the expense of the escrow parties. (3-20-20)

02. Notice of Conflict of Interest. An escrow agent will act without partiality to any of the parties to the escrow. An escrow agent cannot 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 will be disclosed in the written escrow instructions. After noting such interest, an additional statement will 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.” (3-20-20)

03. Closing Statement. On completion of an escrow transaction, the agent will deliver to each principal a written closing statement signed by the agent of each principal's account. The same will show all receipts and disbursements. Any charge made by and disbursements to the escrow agent will be clearly noted. A copy will be retained. (3-20-20)

04. Control of Funds. An escrow agent will maintain one or more trust accounts in a federally insured financial institution into which all escrow funds received will be deposited and from which there will be drawn escrow payments. No other funds will be commingled with such trust account. Escrow fees will not be drawn until the escrow is completely ready to close in accordance with the escrow instructions and will be withdrawn not later than the day on which the final disbursements are made for the escrow closing. (3-20-20)

05. Escrow Accounting Procedures. An escrow agent will 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 will be posted from checks or other vouchers and each item, not the total of items, will be entered. Escrow liability control account will balance with the escrow ledger at all times and will equal the balance of funds in the trust accounts for escrows at the bank. Checks cannot be drawn against an escrow account without sufficient credit balance for the particular escrow existing at the time. Funds will 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 will 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 will be posted the date of the entry without regard of the date of posting, but all entries will be posted daily. (3-20-20)

06. Escrow Records. Each escrow agent will maintain in each escrow transaction: (3-20-20)

a. Evidence of all funds received including copies of all instruments, which will include pre-numbered cash receipts, copies of cashier's checks, wire transfer confirmations or evidence of unconditional payment of checks, as applicable; (3-20-20)

b. Complete evidence of all funds disbursed which will include check stubs or check copies, and wire instructions for all disbursements as applicable; and (3-20-20)

c. A final ledger sheet for each escrow transaction listing all items received and disbursed. All records will be available for audit, inspection and examination by the Director upon demand, and all records will be preserved for not less than six (6) years from the closing date of the escrow. (3-20-20)

07. Bond. Before a license will be issued to a title insurance agent, such agent will comply with the requirements for a bond pursuant to Section 41-2711. Such bond may be in the form that continues from year to year until canceled. In lieu of a bond, cash or securities as herein defined may be deposited with the Director of Insurance. The Director of Insurance approves the following securities which are eligible for deposit in place of the bond: Cash in the form of a cashier's check, any public obligation as defined in Sections 41-707 and 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 will 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 will be deposited with the director pursuant to Section 41-804, Idaho Code, except that the cash will be deposited with the state treasurer for the account of the bond of said depositing agent. (3-20-20)

08. Cancellation of Bond. 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 will 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 will 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. (3-20-20)

09. Disbursement of Funds or Documents From Escrow -- Requirement for Collected Funds. (3-20-20)

a. 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. (3-20-20)

b. Notwithstanding any other provision of Section 021, 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. (3-20-20)

022. ESCROW FEES.
Title insurers and title insurance agents will 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 will 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 will 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 will not be less than the title entity's cost for providing that service. Fees for escrow and closing services will 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 will be filed at least thirty (30) days prior to implementation of the fees. (3-20-20)

023. -- 030. (RESERVED)

031. REBATES AND ILLEGAL INDUCEMENTS.

01. Items of Value. A title entity will not provide items of value to a producer of title business, consumer or member of the general public except as permitted in Sections 031.02, 031.03, 031.04 and 031.05 of this chapter. If a providing of things of value does not clearly fit into the rules in Sections 031.02, 031.03, 031.04, and 031.05, then it is not allowed. Exhibit 1, located on our website at <https://doi.idaho.gov/>, is a partial, but not all-inclusive, list of acts and practices that are considered illegal inducements disallowed by Title 41, Idaho Code. (3-20-20)

02. Permitted Consumer Information. To facilitate the listing and sale of Idaho property, certain consumer information may be provided without charge to licensed real estate agents and brokers or to a person who owns the property for which the request is made, but is limited to the following information: (3-20-20)

a. Listing Package is a single copy of a listing package, property profile, or similarly named packet of information and will consist of information relating to the ownership and status of title to real property, and may include a single copy of only the following seven (7) items: (3-20-20)

- i. The last deed appearing of record; (3-20-20)
- ii. Deeds of trust or mortgages which appear to be in full force and effect; (3-20-20)
- iii. A plat map reproduction and/or a locator map; (3-20-20)
- iv. A copy of applicable restrictive covenants; (3-20-20)
- v. Tax information; (3-20-20)
- vi. Property characteristics such as number of rooms, square footage and year built; and (3-20-20)
- vii. Photographs, including aerial, of the property. (3-20-20)

b. A listing package may include no more than the seven (7) above described items of information and will not include market value information, demographics, or additions, addenda, or attachments which may be construed as conclusions reached by the title entity regarding matters of marketable ownership or encumbrances. Photographs may be provided, but only if the title entity does not pay a separate fee or provide any other consideration to a person for that product or service. The title entity may provide any photographs that are acquired through normal subscriptions or licensing fees associated with obtaining access to county records for tax information, property characteristics, or plat maps, as long as there is no additional charge to the title entity for the production, reproduction or delivery of the photographs. A generic cover letter with the printed standard letterhead of the title entity may be attached to the listing package. The cover letter may include a brief statement identifying by name only, which of the seven (7) permitted items of information are attached thereto. The cover letter may also contain a disclaimer as to conclusions of marketable ownership or encumbrances. The content of the cover letter or listing package is strictly limited to the foregoing and will specifically not include any advertising or marketing for the benefit of the recipient. (3-20-20)

c. Market value information, demographics, additions, addenda, photographs (other than as described in Paragraph 031.02.b) or other attachments, which attachments may be construed as conclusions reached by the title entity regarding matters of marketable ownership or encumbrances, may be provided, but only upon receipt of a charge commensurate with the actual cost of the work performed and the material furnished. (3-20-20)

d. A title entity may provide to licensed attorneys and licensed appraisers only the following documents without charge; (3-20-20)

- i. A plat map reproduction; (3-20-20)
- ii. A copy of applicable restrictive covenants; (3-20-20)

- iii. The last deed appearing of record; and (3-20-20)
- iv. A cover letter as described in Paragraph 031.02.b. (3-20-20)

03. Advertising With Trade Associations. (3-20-20)

a. No advertisement may be placed in a publication that is published or distributed by, or on behalf of, a producer of title business. Advertising in a trade association publication is only permitted if the publication is an official publication, published or distributed by, or on behalf of the trade association with at least regular annual publications. The publications should be nonexclusive (any title entity will have an equal opportunity to advertise in the publication and at a standard rate). The title entity's ad will be purely self-promotional. (3-20-20)

b. A title entity is permitted to donate time to serve on a trade association committee and may also serve as an officer or director for the trade association. A title entity may also donate, contribute or otherwise sponsor a trade association event if the event is a recognized association event that generally benefits all members and affiliated members in an equal manner. The donation cannot benefit selected producer of title business members of the association unless through random process. Solicitation for the donation should be made of all members and affiliated members in an equal manner. Donations are per agent license or insurer and are limited to a cumulative donation value of two thousand dollars (\$2,000) or equivalent things of value collectively to all trade associations per year. In addition, a title entity is allowed to participate in or attend trade association events as long as the title entity pays a fee commensurate with fees paid by other participants in the events. These events include, but are not limited to, conventions, award banquets, symposiums, breakfasts, lunches, dinners, open houses, sporting activities and all other similar activities. (3-20-20)

04. Self-Promotional Advertising. (3-20-20)

a. A title entity may distribute self-promotional items having an acquisition value of less than twenty-five dollars (\$25) to producers of title business, consumers, and members of the general public. These self-promotional items are limited to novelty gifts, advertising novelties, and generic business forms and specifically do not include food, beverages, gift certificates, gift cards, or other items that have a specific monetary value on their face or that may be exchanged for any other item having a specific monetary value. Self-promotional items will not contain the name, logo or any reference to a producer of title business, trade association or donee. (3-20-20)

b. Self-promotional functions are limited to the following two (2) types of functions: (3-20-20)

i. A title entity is permitted to conduct educational programs. The education programs will only address title insurance and escrow and other topics related thereto. A title entity is permitted to expend no more than twenty dollars (\$20) per person at an educational program. For purposes of determining the maximum permitted expenditure, all costs associated with the delivery of the educational program is considered, including but not limited to, costs paid by the entity for travel, refreshments, instructor or speaking fees and facility rental. A title entity may participate in or make presentations at educational programs which are conducted or presented by other entities. The title entity is not permitted to expend any money to sponsor or cosponsor these programs, unless the educational program is a trade association event in which case Subsection 031.03.b of this chapter will apply. (3-20-20)

ii. A title entity is permitted to have two (2) open houses per year. An open house is a self-promotional function at the title entity's owned or occupied facility (i.e. a Christmas party or any party, an open house for remodeling of its facility, an open house for a new building to become the title entity's facility). It is nonexclusive (all producers of title business are invited). A title entity will not expend more than fifteen dollars (\$15) per guest per open house. A title entity cannot combine permitted expenditures for two (2) open houses to be used for one (1) open house. A title entity also cannot accumulate left over or unused expenditures from one (1) open house and use those expenditures for a second open house. (3-20-20)

05. Permitted Business Entertainment. A title entity will not expend more than one hundred dollars (\$100) per person per day for all meals and/or events. Meals and events will include, but not be limited to, breakfast, brunch, lunch, dinner, cocktails, sporting events, sporting activities, trips and music and art events. These meals or events may occur on or off the title entity's premises. In addition, a title entity may entertain no more than four (4)

persons who are employed by or agents of any single producer of title business in a single day. Spouses and/or guests of the producers of title business or employees or agents are included in the count for purposes of determining the four (4) person maximum. In addition, a person cannot be entertained by a title entity more than three (3) days during any ten (10) day period of time. For purposes of determining the maximum permitted expenditure, all costs associated with any meals or events will be considered. This will include, but not be limited to, costs paid by the title entity for travel, transportation, hotel, equipment or facility rental, meals, cocktails, refreshments, registration or entry fees and event tickets. Entertainment permitted under this rule cannot be conditional upon or compensation for forwarding or directing title business to the title entity. (3-20-20)

06. Locale of the Title Insurer or Title Insurance Agent Employees. A title entity will not have any of its employees working in a work space location owned or leased by a producer of title business unless: (3-20-20)

- a.** The space is secured by a bona fide written lease or rental agreement. (3-20-20)
- b.** The space is separate from and can be secured against access by other occupants of the premises. (3-20-20)
- c.** The rental paid for the workspace is consistent with prevailing rental payments for similar space in the market area of the location of the work space. (3-20-20)
- d.** The rental is not dependent on volume of business and is paid only in cash (rental cannot be paid by trade or barter). (3-20-20)
- e.** The space is open to the conduct of business with any producer of title business or consumer. (3-20-20)
- f.** There is no sharing of employees. (3-20-20)
- g.** There is no common usage of space or equipment between the title entity and the producer of title business without a proportionate share of cost, rent, or expense paid by each party. (3-20-20)

07. Penalty. This Section emphasizes and restates the general penalties authorized pursuant to Title 41, Idaho Code, for violations of the anti-rebate and anti-illegal inducement laws. (3-20-20)

a. Section 41-2708(3), Idaho Code, provides that each person and entity giving or receiving a rebate, illegal inducement, or a reduction in rate is liable for three (3) times the amount of such rebate, illegal inducement, or reduced rate. In addition to this penalty, a title entity may also be subject to an administrative penalty as outlined below. (3-20-20)

b. Section 41-327, Idaho Code, provides that the Director may impose an administrative penalty not to exceed five thousand dollars (\$5,000) and/or suspend or revoke an insurer's certificate of authority if the Director finds, after a hearing thereon, that the insurer has either violated or failed to comply with the Insurance Code. (3-20-20)

c. Section 41-1016, Idaho Code, provides that the Director may impose an administrative penalty not to exceed one thousand dollars (\$1,000) and/or suspend or revoke an agent's license if the Director finds, after a hearing thereon, that the agent has either violated or failed to comply with the Insurance Code. (3-20-20)

032. DISSEMINATION.

All title entities are instructed to distribute a copy of this rule to every employee that may be engaged in activities requiring knowledge of its contents, and to instruct all employees in its scope and operation. (3-20-20)

033. -- 999. (RESERVED)

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