

# DEPARTMENT OF REGULATORY AGENCIES

## Division of Insurance

### 8 CCR 702-8

#### New Regulation 8-1-3

#### TITLE INSURANCE STANDARDS OF CONDUCT

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#### **Section 1 Authority**

This regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-108(7), 10-1-109, 10-2-104, 10-3-1110, 10-11-116, 10-11-119, and 10-11-124(2) C.R.S.

#### **Section 2 Scope and Purpose**

The purpose of this regulation is to ensure that consumers receive the benefits of competition in the area of title insurance and to ensure consumer protection. The regulation also proscribes unlawful inducements, deceptive trade practices, and discriminatory acts, all of which are detrimental to the consumer and, in the aggregate, may threaten the solvency of title insurance companies and title insurance agents.

#### **Section 3 Applicability**

This regulation governs title entities and does not extend the regulatory authority of the Colorado Division of Insurance ("Division") to any person other than title entities or persons transacting the business of title insurance. This regulation does not create any type of safe harbor from the enforcement of any federal statutes and regulations applicable to title entities.

#### **Section 4 Definitions**

- A. "Affiliate" means a person who directly, or indirectly through one or more intermediaries:
1. controls a title entity;
  2. is controlled by a title entity; or
  3. is under common control with a title entity.
- B. "Affiliated business arrangements" shall have the same meaning as set forth in § 10-11-102(1), C.R.S. Affiliated business arrangements are distinct from controlled business arrangements, which are defined by § 10-2-401(4), C.R.S.

- C. "Application for title insurance" shall mean receipt by a licensed title entity of an order for a title insurance commitment or other title insurance product that contains information about all parties and details concerning a title insurance transaction.
- D. "Business of title insurance" shall have the same meaning as set forth in § 10-11-102(3), C.R.S.
- E. "Commitment" or "title commitment" shall mean a report furnished in connection with an application for title insurance, which is a statement of the requirements, terms, and conditions upon which the title insurance company is willing to insure an interest in a subject property.
- F. "Core title services" shall have the same meaning as set forth in the United States Department of Housing and Urban Development (HUD) RESPA Statement of Policy 1996-4.
- G. "Division" means the Colorado Division of Insurance.
- H. "Fair Market Value" means, for the purpose of this regulation, a price that represents the value of a product or service being provided, which must include cost and profit.
- I. "Fee" means, for purposes of this regulation only, the price other than the Rates (see subparagraph L below) assessed to a consumer by a title entity in rendering services pursuant to the business of title insurance as defined in § 10-11-102, C.R.S.
- J. "Ownership and encumbrance report" ("O&E") means information identifying the last recorded owner, legal description and recorded unreleased deeds of trust, or mortgages of a particular parcel of real property available from public records.
- K. "Person" has the same meaning as that in § 10-2-103(8), C.R.S.
- L. "Rate", for purposes of this regulation, means expenses as defined in § 10-4-402(1.5), C.R.S., together with the pure premium rate as defined in § 10-4-402(2.4), C.R.S., and includes production expenses and commissions, in accordance with § 10-4-403, C.R.S.
- M. "Remuneration" means, for the purposes of this regulation, any type of payment or compensation.
- N. "Services actually rendered" for the purposes of this regulation includes, but is not limited to, a reasonable examination of title, including instruments of record, and a determination of insurability of such title in accordance with sound underwriting practices. "Services actually rendered" does not include the mere referral of title insurance business.
- O. "Settlement producer" shall have the same meaning as set forth in § 10-11-102(6.5), C.R.S., and does not include insurance producers as defined in § 10-2-103(6), C.R.S.
- P. "Settlement services" shall have the same meaning as in §10-11-102(6.7), C.R.S.
- Q. "TBD commitment" shall mean a report, in the form of a commitment, furnished prior to receipt of an application for title insurance, in which the buyer, sales amount, and loan amount, among other possible details, are not yet known.
- R. "Title insurance agency" means, for the purpose of this regulation, a corporation, partnership, association, or foreign or domestic entity as defined in § 7-90-102, C.R.S., or other legal entity that transacts the business of insurance.
- S. "Title insurance agent" shall have the same meaning as in § 10-11-102(9), C.R.S.
- T. "Title insurance company" shall have the same meaning as in § 10-11-102(10), C.R.S.

- U. "Title entity" shall mean title insurance agents, title insurance agencies and title insurance companies, unless otherwise stated in the regulation.
- V. "Trip", means, for the purposes of this regulation, a journey or getaway that includes any one or more of the following:
  - 1. Air travel;
  - 2. Travel outside the state of Colorado;
  - 3. Any overnight lodging or accommodation.

## **Section 5 Rules Regarding Standards of Conduct for Title Insurance Entities**

- A. A title entity shall not give remuneration to any person, either directly or indirectly, pursuant to any agreement or understanding, oral or otherwise, for the referral of the business of title insurance, other than remuneration that is a part of a compliant and authorized affiliated business agreement or for services actually rendered.
- B. An agreement or understanding for the referral of the business of title insurance need not be written or verbalized but may be established by a practice, pattern, or course of conduct. When any type of remuneration is given repeatedly and is connected in any way with the volume or value of the business referred, the giving of the remuneration is evidence that it is made pursuant to an agreement or understanding for the referral of the business of title insurance.
- C. The following activities are permissible standards of conduct:
  - 1. Providing discounts that are properly filed and justified in the title entity's rate or fee filing.
  - 2. Furnishing a TBD commitment for a charge that bears a reasonable relation to the cost of production of the TBD commitment or crediting a charge paid for a TBD commitment to the final premiums or fees paid upon the consummation of the transaction contemplated by such TBD commitment, when such charge has been properly filed and justified.
  - 3. Paying, furnishing, or providing a proportional share of the actual cost for a thing of value being provided. The title entity must comply with Section 5.C.12. if the title entity is providing promotional materials and Section 5.C.13. if the title entity is providing office space or accommodation.
  - 4. Crediting a charge paid for an ownership and encumbrance report to the final premiums or fees paid upon the consummation of the transaction contemplated by such ownership and encumbrance report.
  - 5. Accumulating, crediting or deferring the charge for a title policy or a closing or settlement service, to the extent that a properly filed and justified rate or fee is in place for the accumulated, credited, or deferred charge.
  - 6. Paying for or furnishing a business form to a settlement producer which is a form regularly used in the conduct of the title entity's business and which form is furnished solely for the convenience of the title entity and does not constitute a monetary benefit to a settlement producer.
  - 7. Advancing or paying into escrow, or offering to advance or pay into escrow, title entity funds as provided in Division Regulation 8-1-2 Section 5.J.1.

8. Providing a single copy of the last recorded vesting deed for a parcel of real property to a settlement producer without charge if:
  - a. The document is provided as presented by the public records and nothing of material value is added to the information contained in it; and
  - b. The document provided contains no advertising or promotional material on behalf of the settlement producer.

Nothing in this regulation prohibits title entities from imposing a reasonable fee for any of the above information, or for additional information, provided the fee is the same for all persons, assessed on a non-discriminatory basis, and is filed in compliance with Regulation 8-1-1.

9. Providing to a settlement producer a copy of an instrument of public record in connection with the issuance of a commitment or TBD commitment, including but not limited to a deed, deed of trust, mortgage, judgment, lien, contract, map, plat, declaration of covenants, conditions, and restrictions, or any other document purporting to affect a parcel of real property without charge if:
  - a. The document is provided in concert with the issuance of a commitment for title insurance;
  - b. The document is provided as presented by the public records and nothing of material value is added to the information contained in it; and
  - c. The document provided contains no advertising or promotional material on behalf of the settlement producer.

Nothing in this regulation prohibits title entities from imposing a reasonable fee for any of the above information, or for additional information, provided the fee is the same for all persons, assessed on a non-discriminatory basis, and is filed in accordance with Regulation 8-1-1.

10. Providing a quote for title insurance premiums and settlement service fees for a specific real estate transaction. Such a quote need not comply with the reasonable search and examination standards required by § 10-11-106, C.R.S., or Regulation 8-1-2, provided said quote is not binding in the event a reasonable search and examination of the property records reveals a circumstance in which the quoted rate or fee must be amended.

11. Issuing a closing protection letter that satisfies the following standards:
  - a. Any closing protection letter issued substantially conforms to an American Land Title Association ("ALTA") promulgated form, which includes amending such form to be applicable to a seller;
  - b. Any fees that are charged for a closing protection letter is not in any way included in the rate charged for the title insurance product;
  - c. Any fees that are charged for the closing protection letter are disclosed to the consumer paying the fee;
  - d. Any fees that are charged for a closing protection letter have been properly filed and justified in accordance with Regulation 8-1-1;

- e. Any fees that are charged for a closing protection letter are remitted to the title insurance company that provides the title insurance for the subject transaction; and
  - f. The title insurance company includes a notice to the consumer on the commitment disclosure statement of the availability of the issuance of a closing protection letter.
- 12. Normal promotional and educational activities that:
  - a. Are not conditioned on the referral of the business of title insurance;
  - b. Do not involve the defraying of expenses that otherwise would be incurred by persons in a position to refer settlement services or business incident thereto;
  - c. Comply with paragraphs 5.C.15 through 19.; and
  - d. Do not violate paragraph 5.D.20. of this regulation.
- 13. Utilizing office space or other accommodations within a settlement producer's office or business space, provided that rent is paid in accordance with Section 5.C.3., if:
  - a. Written notice has been provided to the consumer disclosing that an office or accommodations sharing arrangement exists and that the consumer has the right to shop for and use another title entity and/or settlement producer;
  - b. The title entity's space is clearly and conspicuously identified separately from the settlement producer's space;
  - c. The title entity's space can be readily locked and secured independently from the settlement producer's space;
  - d. The title entity's space is directly and easily accessible to the public without entering the settlement producer's primary workspace, such as where the title entity's entrance leads to or from a common area or the exterior of the premises; and
  - e. The title entity does not directly or indirectly pay for or subsidize the settlement producer's expenses as proscribed by § 10-11-108, C.R.S.
- 14. Charitable donations that meet the following requirements:
  - a. The donation must be made directly to the charitable organization; and
  - b. The donation must not be made on behalf of a settlement producer.
- 15. Expenditures for business meals as a method to promote a title entities business, only when at least one title insurance producer attends the business meal for every four settlement producers that attend the business meal.
- 16. A title entity may provide or sponsor educational courses under the following conditions:
  - a. The topic of the education course is title insurance, escrow, closing and settlement services, other courses related to such topics, or real estate and mortgage classes;

- b. The education course be at least one hour in duration; and
    - c. If the topic of the education course is residential real estate or mortgage classes, escrow, closing and settlement services, the title entity conducting or sponsoring the course must provide Appendix A of this regulation, titled "Title Insurance Closing Protection Letters (CPLs)," to all individuals taking the course.
  - 17. Attending or participating in local sporting events as a method to promote any title entities' business, only when at least one title insurance producer attends, or participates in, the sporting event for every four settlement producers that attend, or participate in, the sporting event.
  - 18. A title entity may attend and participate in trade association activities and events under the following conditions:
    - a. Any marketing and promotional items and gifts promoting a title entity must be available to the public;
    - b. Any advertising purchased by the title entity in a trade association publication is purchased at fair market value; and
    - c. The title entities attendance or participation in the trade association activities and events must not violate paragraph 5.D.20. of this regulation.
  - 19. Expenditures for coffee, donuts, bagels, or other similar refreshments, for a settlement producer, as a method to promote the title entities' business, only when at least one title insurance producer is present to promote the title entities' business.
- D. The following is a partial, but not all-inclusive, list of acts and practices which the Division considers per se unlawful inducements proscribed by § 10-11-108, C.R.S.:
  - 1. Except as otherwise permitted in Regulation 8-1-2 Section 5.J.1., the disbursement of closing and settlement services funds before all necessary conditions of the transaction have been met.
  - 2. Furnishing a title commitment without charge or at a reduced charge, in the absence of a bona fide sale, purchase or loan transaction. The charge for a commitment must have a reasonable relation to the cost of production of the commitment.
  - 3. Furnishing a TBD commitment without a charge that bears a reasonable relation to the cost of production of the TBD commitment. Any such charge must be properly filed and justified in accordance with Regulation 8-1-1. While such charge for the production of a TBD commitment must be made at the time the TBD commitment is provided, nothing in this provision shall prohibit a company from crediting a charge paid for a TBD commitment to the final premiums or fees paid upon the consummation of the transaction contemplated by such TBD commitment.
  - 4. Paying for, furnishing, providing, subsidizing, waiving or offering to pay, furnish, provide, subsidize or waive, to or for any settlement producer or associate, all or any portion of the following:
    - a. The cancellation fee for a title commitment or other fee before or after a settlement producer cancels an order with another title entity; and

- b. Salary, compensation or services, except for services actually rendered, including but not limited to:
  - (1) All or any part of the time or productive effort of any employee or affiliate of the title entity (e.g., office manager, escrow officer, secretary, clerk, messenger) to any settlement producer at less than the fair market value of the services;
  - (2) Compensation of a settlement producer or associate of a settlement producer;
  - (3) The salary or any part of the salary of a relative of any settlement producer which payment is in excess of the reasonable value of the work actually performed by such relative on behalf of the title entity; and
  - (4) Services by any settlement producer, which services are required to be performed by such settlement producer in his or her professional capacity, and for which the settlement producer would not normally charge the title entity.
- 5. Except for services actually rendered, paying a settlement producer or associate to make an inspection or appraisal of property.
- 6. Any transaction in which any person receives, or is to receive, securities of the title entity or its affiliates at prices below the normal market price, or bonds or debentures which guarantee a higher than normal interest rate, when such transaction is directly or indirectly related to the number of closing and settlement services or title orders coming to the title entity through the efforts of such person.
- 7. Charging less than the scheduled rate or fee for a specified title or closing and settlement service, or for a policy of title insurance.
- 8. Waiving, or offering to waive, all or any part of the title entity's established rate or fee for services which are not the subject of rates or fees filed with the Commissioner or are required to be maintained on the entity's schedules of rates and fees.
- 9. Furnishing information, including but not limited to, farm packages and ownership and encumbrance reports, or similar packages containing information about one or more parcels of real property, without both making a charge that is commensurate with the fair market value of the work performed and the material furnished, and making a good faith effort to collect payment in the amount of such charge. While such charge for the production of an ownership and encumbrance report must be made at the time the report is provided, nothing in this provision prohibits a company from crediting a charge paid for an ownership and encumbrance report to the final premiums or fees paid upon the consummation of the transaction contemplated by such ownership and encumbrance report.
- 10. Subsidizing the production of ownership and encumbrance reports, farm packages, information kits, or similar packages containing information about one or more parcels of real property, whether through sponsorship, advertising, or any other direct or indirect method of payment to a company or organization that is able to produce such materials but is not subject to the rules and regulations of the division.
- 11. Designing, producing, printing, distributing or causing to be designed, produced, printed, or distributed, on behalf of any settlement producer, postcards, flyers, home information

books, business cards, or any other product used to market to prospective clients without both making a charge that is commensurate with the fair market value of the work performed and the material furnished, and making a good faith effort to collect payment in the amount of such charge.

12. Accumulating, crediting or deferring the charge for a title policy or closing and settlement services in order to qualify the charge for said policy and a later transaction for a lower rate or fee, except to the extent that a properly filed and justified rate or fee is in place for a deferred rate.
13. Making or guaranteeing or offering to make or guarantee, directly or indirectly, any loan to any settlement producer, regardless of the terms of the note or guarantee.
14. Guaranteeing, or offering to guarantee, the performance or services of any settlement producer.
15. Providing, or offering to provide, either directly or indirectly, a "compensating balance" or deposit in a lending institution either for the express or implied purpose of influencing the extension of credit by such lending institution to any settlement producer, or for the express or implied purpose of influencing the placement or channeling of title insurance business by such lending institution.
16. Paying for, or offering to pay for, the fees or charges of an outside professional (e.g., an attorney, engineer, appraiser, or surveyor) whose services are required by any settlement producer or consumer to structure or complete a particular transaction.
17. In addition to those services in Section 5.D.11., providing, or offering to provide, non-title insurance services (e.g. computerized bookkeeping, forms management, computer programming, REO or foreclosure services, or any similar non-title insurance benefit) to any settlement producer at less than the fair market value of the services.
18. Advancing or paying into escrow, or offering to advance or pay into escrow, any of the title entity funds or "closing short", except as provided in Regulation 8-1-2.
19. Charging less than the actual cost of the closing and settlement service of the title entity.
20. Co-sponsoring, subsidizing, paying for, or contributing fees, prizes, gifts, or other things of value to a settlement producer including, but not limited to:
  - a. Meetings, except for meetings on the title company's premises and educational courses as allowed by section 5.C.16. of this regulation;
  - b. Any type of incentive, retreat, transportation, or vacation;
  - c. The attendance of a settlement producer at a trade association event or meeting;
  - d. Open house celebrations, or open houses at homes or property for sale;
  - e. Recreational activities including, but not limited to:
    - (1) Boat trips;
    - (2) Fishing trips;



- (3) All types of parties including cocktail parties, barbeques and holiday parties;
  - (4) Gambling trips;
  - (5) Hunting trips;
  - (6) Ski trips;
  - (7) Golf trips; and.
  - (8) Trips to or events at recreational or entertainment areas; or
- f. Co-sponsoring, subsidizing, paying for, or contributing fees, prizes, gifts or other things of value to a settlement producer in a manner designed to evade the provisions of this paragraph 5.D.20.
21. A marketing arrangement commonly referred to as Marketing Services Agreement (MSA), between a title entity and settlement producer that in any way is designed to disguise the payment of referral fees.

E. Affiliated Business Arrangements:

1. Section 10-11-124 (1)(a), C.R.S. permits an affiliated business arrangement where the person referring the business to the affiliated business arrangement receives payment only in the form of a return on an investment and where it does not violate the provisions of § 10-11-108 (1), C.R.S. Affiliated business arrangements which are tied to the referral of title insurance business are a per se unlawful inducement proscribed by § 10-11-108(1), C.R.S., and constitute a violation of § 10-11-124 (1) (a), C.R.S. The Division will make determinations as to compliance with these sections on a case-by-case basis. Prohibited arrangements include, but are not limited to the following:
- a. Arrangements in which the amount of the return on the ownership interest is directly or indirectly conditioned on the number of or premium volume of referrals made, such as where owners or stockholders receive dividends or bonuses based on the number of referrals generated or achievement of certain referral plans or goals;
  - b. Arrangements in which the ownership interests themselves are conditioned on the referrals, such as where the stock certificates are distributed based on the number of or premium volume of the referrals made in the past or to be made in the future;
  - c. Arrangements in which owners or stockholders receive anything of value that is directly tied to the referral of business;
  - d. Arrangements in which employees, agents, or associates of the owners or stockholders receive incentives, inducements, or other things of value directly tied to the referral of business;
  - e. Arrangements in which the cost of the ownership opportunity is not equivalent for all investors;

- f. Arrangements in which no formal business plan is developed and/or the formation of such arrangement is designed to obscure kickbacks in the form of dividends or other considerations and not for a bona fide business reason.
2. "Sham" affiliated business arrangements are prohibited.
- a. In considering whether or not a title entity is a legitimate affiliated business arrangement or a "sham" affiliated business arrangement the factors the Division will consider include but are not limited to the following:
    - (1) Whether the title entity is structured and operated in a manner that evidences a good faith effort to conform to applicable title insurance laws.
    - (2) Whether the title entity maintains a separate and distinct, verifiable physical location. In the event the title entity shares office space with a settlement producer, the Division shall consider the factors set forth in Paragraph C.13.a. through e. of this Section, inclusive, in determining compliance with this provision. In the event the title entity shares office space with another title entity the Division shall consider the following factors:
      - (a) Whether the title entity's space is clearly and conspicuously identified separately from another title entity's space;
      - (b) Whether the title entity's space can be readily locked and secured independently from another title entity's space; and
      - (c) Whether the title entity's space is directly and easily accessible to the public without entering another title entity's primary workspace, such as where the title entity's entrance leads to or from a common area or the exterior of the premises.
    - (3) Whether the title entity was established with at least the minimum capitalization required pursuant to § 10-11-116 (2), C.R.S. and maintains such minimum capitalization at all times.
    - (4) Whether the title entity shares employees with another title entity, settlement producer or other affiliated entity. In determining whether or not an individual is an employee of the title entity, the Division may consider the following factors:
      - (a) Whether the title entity issues, or causes to be issued, an annual Internal Revenue Service Form W-2 to the employee;
      - (b) Whether the employee is subject to the title entity's supervision and control;
      - (c) Whether the employee devotes fixed periods of time exclusively to the business of the title entity or whether the employee is compensated on a fluctuating per-hour basis or per-transaction basis;
      - (d) Whether the employee is physically located in the office of the title entity.

- (5) Whether the title entity performs core title services, by and through its employee(s). In accordance with the HUD Statement of Policy 1996-4 the title entity shall not collect premiums for services not actually performed.
- (6) What, if any, title or settlement services the title entity has contracted to other sources.

In addition to the above factors the Division will consider the guidelines set forth in the HUD Statement of Policy 1996-2, Sham Controlled Business Arrangements (commonly referred to as the "HUD 10-Step Sham Test"), which Statement is incorporated herein by reference. The Division may also consider any other relevant facts and circumstances relating to the above factors and to those elements set forth in the 10-Step Sham Test.

- 3. An affiliated business arrangement shall comply with the disclosure requirements set forth in § 10-11-124 (1) (b), C.R.S. Such disclosure shall be in accordance with the "Real Estate Settlement Procedures Act", 12 U.S.C. sec 2601, et seq. The title entity shall maintain documentation of such disclosure in its title and/or escrow file for no less than a period of seven (7) years.

#### **Section 6 Severability**

If any provision of this regulation or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of this regulation shall not be affected.

#### **Section 7 Enforcement**

Noncompliance with this regulation may result in the imposition of any of the sanctions made available in the Colorado statutes pertaining to the business of insurance, or other laws, which include the imposition of civil penalties, issuance of cease and desist orders, and/or suspensions or revocation of license, subject to the requirements of due process.

#### **Section 8 Effective Date**

With the exception of Section 5.C.11., this regulation shall become effective on August 1, 2016. Section 5.C.11. shall become effective on January 1, 2017

#### **Section 9 History**

New regulation effective August 1, 2016.

## Appendix A

### TITLE INSURANCE CLOSING PROTECTION LETTERS (CPLs)

The purpose of this appendix is to provide information regarding the issuance and protections of Closing Protection Letters (“CPLs”).

Colorado Insurance Regulation 8-1-3 states, in part, that title insurance companies may issue CPLs and, in addition, that title entities may conduct or sponsor certain types of educational courses, if the standards of Regulation 8-1-3 are met. In the event a title entity is sponsoring or conducting a course related to real estate or mortgage issues, the title entity must provide this appendix to the individuals taking the course.

CPLs contractually obligate a title insurer to indemnify certain parties to a real estate transaction for certain improper actions of the agent of the title insurer. CPLs can be issued to lenders, buyers and sellers. Key protections may include:

- Loss due to fraud, dishonesty, or negligence, misappropriation of funds or defalcations by the title insurance agent, and
- Loss due to failure to comply with the closing instructions of the lender as provided for by the terms of the CPL.

For more information regarding CPLs, please contact your local title agent or title insurance company.