

Title 210 - NEBRASKA DEPARTMENT OF INSURANCE

Chapter 34 - TITLE INSURANCE

001. Authority. This rule is adopted and promulgated by the Director of Insurance of the State of Nebraska pursuant to the Title Insurers Act, *Neb. Rev. Stat. §44-1978 et seq.*, specifically §44-19,101 and pursuant to the Title Insurance Agent Act, *Neb. Rev. Stat. §44-19,106 et seq.*, specifically §44-19,119.

002. Purpose. The purpose of this rule is to set forth standards the director deems necessary to carry out the provisions of *Neb. Rev. Stat. §44-1978 et seq.* and *Neb. Rev. Stat. §44-19,106 et seq.*

003. Severability. If any section of this rule, or the applicability thereof to any person or circumstance, is held invalid by a court, the remainder of this chapter and the applicability of such provision to other persons or circumstances shall not be affected thereby.

004. Scope. This rule shall apply to all title insurers authorized to do business in Nebraska and all title insurance agents licensed in Nebraska.

005. Definitions.

005.01 The definitions provided in *Neb. Rev. Stat. §44-1981* and *Neb. Rev. Stat. §44-19,108* apply for the purposes of this chapter.

005.02 Title insurance agency shall mean a business entity licensed by the Department of Insurance with a title insurance agent or agents appointed by the entity to act as the designated agent or agents of the entity and who are thereby responsible for the insurance related activities of the entity.

005.03 Audit sample or audit sampling shall mean samples selected based upon sampling guidelines established in the American Institute of Certified Public Accountants Audit and Accounting Guide – Audit Sampling as well as SAS 39 – Audit Sampling, the National Association of Insurance Commissioners Financial Condition Examiners Handbook, or the National Association of Insurance Commissioners Market Conduct Examiners Handbook. In the audit report, the auditor shall note the number of items selected for the audit sample and the reason(s) why that number was selected. The auditor shall select a sample which will give the auditor reasonable assurance the transactions and accounts are free from material errors.

006. Title Insurer On-Site Review and Report. Each title insurer authorized to do business in Nebraska shall adopt and utilize the following standards and procedures for the on-site review of title insurance agents as required by *Neb. Rev. Stat. §44-1993(3)*. Such standards shall be deemed minimum standards and will not preclude title insurers from applying more stringent or comprehensive procedures. On-site review documentation, work papers, summaries and reports shall be maintained by each title insurer for the period of at least four (4) years and shall be made available to the Director of Insurance upon request pursuant to the Insurers Examination Act, *Neb. Rev. Stat. §44-5901 et seq.* A report shall be prepared by the title insurer at the completion of the on-site review setting forth the title insurer's findings on each item listed below as well as any additional items the title insurer includes in its on-site review. In the case of a title insurance agency on-site review, the title insurer shall include in the report a list of title insurance agents employed by said title insurance agency on the date of the on-site review. The report shall be maintained by the title insurer and provided to the Director of Insurance upon request. If the title insurer's on-site review indicates the title insurance agent is deficient in any of the areas listed below, the title insurer shall notify the Department within five (5) business days if the title insurance agent has not remedied or can not remedy the deficiency within that time. The title insurer shall file the on-site review report with the Director of Insurance and explain the areas of deficiency and the agent's progress made, if any, during the five-business day grace period.

006.01 Agency Contract. Each on-site review shall include a review of the title insurer and title insurance agency/title insurance agent contracts to ensure (a) the contract sets forth the responsibilities of each party and, when both parties share the responsibility for a particular function, specifies the division of responsibilities and (b) the contract is up-to-date and properly executed.

006.02 Licensure Review. Each on-site review shall include a review of compliance with Nebraska licensing requirements related to the title insurance agent, and abstractors, if applicable.

006.03 Financial Responsibility. The title insurer shall obtain from the title insurance agent, or from the title insurance agency if the title insurance agent is employed by a title insurance agency, a statement of financial condition of the title

insurance agent or title insurance agency as required pursuant to *Neb. Rev. Stat.* §44-1993(2) and §44-19,114(14) which includes an income statement and balance sheet showing the condition of the title insurance agent/agency affairs as of December 31 of the preceding year. This statement of financial condition shall be certified by the title insurance agent or the title insurance agency's designated agent as being a true and correct representation of the financial condition. The title insurer shall document its receipt of the title insurance agent's or title insurance agency's statement of financial condition in the title insurer's on-site review report.

006.04 Management Evaluation. Each on-site review shall include a review of management practices related to conflicts of interest, affiliated business arrangements, and regulatory compliance.

006.05 Title Plant Maintenance. The title insurer shall review the title insurance agent's procedures to update and maintain title plant records, if applicable.

006.06 Underwriting Practices. The title insurer shall establish underwriting standards to minimize claims or potential losses to insurers, lenders, and consumers. The title insurer shall conduct a random file review using an audit sample to ascertain the thoroughness and accuracy of the title insurance agent's search procedures.

006.07 Office Maintenance.

006.07(A) Each on-site review shall include a review of the following items:

006.07(A)(1) Order log and policy register;

006.07(A)(2) Reconciliation of orders with commitments, title searches, title policies, and collection of premium;

006.07(A)(3) Reconciliation of policy numbers provided to the title insurance agent, existing inventory and issued policies;

006.07(A)(4) Review of the title insurance agent's procedure for tracking issued commitments;

006.07(A)(5) Review of the title insurance agent's practices to cancel commitments on transactions that do not close;

006.07(A)(6) Review of the title insurance agent's procedures for follow-up after closing to track status of outstanding conditions required for timely issuance of policies;

006.07(A)(7) Review of the title insurance agent's procedure for voiding policies;

006.07(A)(8) Review of the title insurance agent's tracking of open escrow, security, settlement or closing files;

006.07(A)(9) Review of title insurance agent's issued policy reports to the title insurer.

006.07(B) To assist the title insurer and the Department, the title insurance agent shall maintain a log or logs containing the above referenced information and any additional information if required to be tracked by the title insurer.

006.08 Claims. If the title insurance agent has the authority to settle claims on behalf of the title insurer, the on-site review shall include a review of the agent's claims procedures to ensure timely review, proper investigation, adequate documentation, and resolution.

006.09 Policy Delays. The on-site review shall include a review of the title insurance agent's files awaiting policy issuance to determine the average length of time between closing and the issuance of the title policy. The title insurer shall document whether the title insurance agent has appropriate follow-up procedures in place to request needed items after the closing, and whether the title insurance agent is actively using those procedures. The delay between the date all of the requirements to insure have been met and policy issuance shall be no longer than sixty (60) days.

006.10 Policy Issuance. The on-site review shall include an audit sample and review of issued policy files. The review of the sample should determine compliance with the following: (a) use of correct policy and endorsement forms; (b) accuracy of insured information, exclusions, and property identification; (c) timely processing of policies after requirements to insure have been met; (d) accuracy of premium charged; (e) proper use of required disclosures; and (f) the title insurer shall track the receipt of premium funds from the closing to the agent's escrow, settlement, security or closing account and any other accounts to the title insurance agent's premium remittance account.

006.11 Escrow Closings. For those agents performing escrow, security settlement or closing services pursuant to *Neb. Rev. Stat. §44-19,116*, the title insurer shall review the title insurance agent's closing procedures and shall include an audit sample of escrow closing files. The review shall include a determination of compliance with *Neb. Rev. Stat. §44-19,116* with the following: (a) use of escrow agreements; (b) adherence to the "good funds" requirements, (c) deposit practices, (d) disbursement of funds in compliance with written instructions, and (e) recording of all deeds, releases, and other documents required of the title insurance agent.

007. Agent Records Retention

The title insurance agent shall preserve and maintain records of its affairs, including title insurance, escrow operations, security deposit, and escrow trust accounts

for as long as appropriate under the circumstances but, in no event, less than fifteen years after the title insurance policy has been issued or ten years after the escrow or security deposit account has been closed.