

## **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 ~~audit~~ 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 shall mean procedures set forth in Section 007 of this regulation.~~

005.043 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 certified public accountant 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, (e) recording of all deeds, releases, and other documents required of the title insurance agent, and (f) a review of the title insurance agent's certified public accountant audit report acknowledged in the on-site review report.

~~007. Agent Financial Audit.~~ 007. Agent Records Retention

~~007.01~~ Effective January 1, 2004, every title insurance agent shall arrange for and shall have an annual audit made of its escrow, security, settlement or closing accounts, conducted by a certified public accountant on a calendar year basis at its expense within ninety days after the close of the previous calendar year. A title insurance agent shall not attempt to prevent or prohibit a title insurer which is contracted with the agency or a certified public accountant from whom an audit has been arranged, access to its escrow, settlement, closing and security deposit accounts, or any other financial accounts including balance sheet and income statement accounts. 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.

~~007.02~~ Scope of Examination. The examination procedures are minimum procedures to be performed by the certified public accountant. These procedures should not be construed as restrictive. Circumstances relating to individual engagements or situations encountered may make it necessary or desirable to expand certain procedures, apply alternate procedures, or extend examination procedures to other areas.

~~007.02(A)~~ The certified public accountant will apply the following financial audit procedures to his or her examination of the title insurance agent's escrow, security, settlement, or closing accounts and note the results of the following in the audit report:

~~007.02(A)(1)~~ Assume control over relevant records until procedures have been completed.

~~007.02(A)(2)~~ Obtain listing of all bank account information maintained by the title insurance agent, including but not limited to escrow, security deposit, 1031 exchange, and operating accounts. The listing should include the bank name, address, account number, and purpose of the account. Confirm all balances and completeness of account listing with financial institutions as of the control date. Obtain the year end reconciliation of each bank account noting the date of the reconciliation and whether the reconciliation was performed during the last 60 days. Agree balances to supporting bank confirmation, general ledger, and bank statements. Select an audit sample of the reconciling items and trace to subsequent disposition or supporting documentation. Ascertain that reconciling items are cleared within 60 days.

~~007.02(A)(3)~~ Ascertain whether the title insurance agent uses a separate operating account for business expenses. Obtain bank statements for the operating account since the last control date. Select an audit sample and agree to supporting documentation, noting whether such payments were for operating expenses.

~~007.02(A)(4) Select an audit sample from escrow bank accounts and agree such transactions to the supporting escrow file to which such transaction relates.~~

~~007.02(A)(5) Obtain a listing of all escrow files with other than a zero balance. Select an audit sample and ascertain that amounts are included in, or are reconcilable to, the escrow accounts of the agency. Document the title insurance agent's procedure for investigating and resolving out-of-balance files.~~

~~007.02(A)(6) Select an audit sample from the order log that will give reasonable assurance that the escrow account file listing obtained in Section 007.02(A)(5) is complete. Ascertain that the escrow balances per the title insurance agent's files are included in or reconcilable to, the escrow account file listing.~~

~~007.02(A)(7) Determine that the title insurer's portion of the title insurance premium amounts is maintained in a qualified financial institution pursuant to *Neb Rev. Stat.* 44-19,114 and that the title insurance agent deposits said premium in the account on a monthly basis. Obtain a complete listing of closings for the year and select an audit sample of receipts of title insurance premium from the escrow, security, settlement or closing files. Agree the premium amount to the deposit in qualified bank account and then to the inclusion in a report sent to the title insurer and ensure that appropriate liability has been established to offset unremitted premium held in the account.~~

~~007.02(A)(8) Select an audit sample of escrow files since the last control date. Obtain escrow agreements and determine whether funds disbursed were applied in accordance with the agreement's instructions, that such funds received were "good funds" as defined by statute, and that such funds were deposited within the timeframe required by statute. If excess funds remained after completion of the transaction, determine that excess funds were remitted to the appropriate party or handled in accordance with applicable escheat laws.~~

~~007.02(A)(9) Obtain the most recent title insurer on-site review report regarding the title insurance agent's escrow procedures noting the results of the procedures. The title insurer should review the flow of escrow funds through the agency, the deposit process, and check issuance.~~

~~007.02(A)(10) Perform the following procedures relating to internal controls:~~

~~007.02(A)(10)(a) Ascertain that the title insurance agent has procedures for excess funds and escheat property.~~

~~007.02(A)(10)(b) Ascertain that the title insurance agent has policies and procedures regarding the reconciliation of general ledger account balances to subsidiary ledgers, reconciliation of~~

~~accounts with financial institutions, and resolution of reconciling items.~~

~~007.02(A)(10)(c) Ascertain whether the title insurance agent utilizes dual signatures on disbursements from the escrow account, and whether reconciliations are independently reviewed.~~

~~007.02(A)(10)(d) Ascertain whether separate accounts are maintained and utilized for the title insurance agent operating expenses, premium remittances, and escrow, security, settlement and closing business.~~

~~007.02(A)(10)(e) Ascertain whether the title insurance agent carries errors and omissions insurance and whether premiums for such insurance are current.~~

~~007.02(A)(10)(f) Ascertain whether third parties utilized by the title insurance agent to disburse funds are bonded except for attorneys who are title insurance agents and issue policies as a part of their legal representation of clients, lenders, and real estate agents.~~

~~007.02(A)(10)(g) Ascertain whether the title insurance agent requires an escrow agreement executed by the title insurance agent and the customer on each escrow transaction.~~

~~007.03 Examination Report. A report shall be prepared and submitted to the title insurance agent, the Nebraska Department of Insurance, and each of the title insurers with which the title insurance agent is appointed describing the scope of examination and the result of the procedures performed. Any open or unreconciled items at the time the report is submitted shall be disclosed and commented upon in the report. In the case of a title insurance agency audit, the certified public accountant shall include in the audit report a list of title insurance agents employed by said title insurance agency on the date of the audit. The report shall contain the date of the procedures and a statement that the minimum examination procedures were met. Any resistance to the audit by the title insurance agent or agency, delays in providing information to the certified public accounts, or indication of defalcation discovered during the examination shall be reported to the Nebraska Department of Insurance immediately without regard to the completion of the examination.~~

~~008. Effective Date. This regulation shall become effective on January 1, 2004.~~