

BE INFORMED.

BE PREPARED.

BE COMPLIANT.

REGULATION 3-5-1

FAQ

HTC

Heritage
Title Company

Making Transactions Personal

On May 1, 2010, the new version of Regulation 3-5-1 (the "Regulation") takes effect. This document will answer some questions about the regulation, and includes both old and new information. This will be updated with new information as needed.

Section 5 - Rates and Fees

1. Do title agencies have to file their fees through SERFF?

No. Title agencies must file their fees with the Colorado Division of Insurance (the "Division") on paper. All filings must include a cover letter, Form TA, a list and description of fees, justification for those fees, a statement of compliance, a side-by-side comparison for amended fees, and a duplicate copy of the filing with a self-addressed, stamped envelope. (*Bulletin B-5.18, Reg 3-5-1(5)(D), Reg 5-1-10, §10-11-118, C.R.S.*)

2. What needs to be in the justification for title agency fees?

All justifications must provide complete support for the proposed fees. This includes itemizations of actual expenses associated with the fee, explanations of how those expenses are accounted for in the fee, and any other factors used in developing the fee. (*Reg 3-5-1(5)(D), §10-11-118, C.R.S.*)

3. What are the rules for effective dates?

The effective dates for premiums and fees cannot be fewer than 30 days from the date the Division receives the filing. (*Reg 3-5-1(5)(D), §10-11-118, C.R.S.*)

Section 6 - Standards of Conduct

4. What are the new rules for O&E's?

Free ownership and encumbrance reports (O&E's) are not permitted. Beginning May 1, 2010, all title entities must charge for O&E's. All charges must be properly filed with the Division. (*Reg 3-5-1(6)(D)(11), §10-11-108, C.R.S.*)

5. What are the new rules for TBD's?

Free TBD commitments (TBD's) are no longer permitted beginning May 1, 2010.

Any charge paid for a TBD may be credited back at the closing of a transaction. Title entities should keep track of TBD's in a manner that will allow for documentation of these charges and credits. (*Reg 3-5-1(6)(D)(5), §10-11-108, C.R.S.*)

6. What does subsidizing the production of free materials mean?

Businesses that do not issue title insurance commitments or policies are not regulated by the Division. These businesses are not subject to the prohibitions on free O&Es and other marketing products. Regulated title entities may not sponsor, advertise with, or in any other way pay these businesses in order to get around Regulation 3-5-1 and give customers free products. *(Reg 3-5-1(6)(D)(12), §10-11-108, C.R.S.)*

7. Are there any products that may be given for free?

Title entities may give a single copy of the last recorded vesting deed on a property without charge.

When issuing a commitment for title insurance, a title entity may give copies of the background or exception documents for the property without charge. *(Reg 3-5-1(6)(F)(1) and (2))*

8. What classes can a title entity teach?

A title entity may teach classes on any subject they feel qualified to teach. The rules, however, focus on what classes may be taught free of charge. If a class is primarily related to the business of title insurance (i.e. commitments, policies, closings, or any similar matters that pertain closely to title insurance) it may be conducted without charge to the attendees. This includes reasonable expenses for food and beverage, room fees, etc. If a class does not relate to title insurance (e.g. real estate marketing, real estate forms, etc.), then any costs associated with the class must be passed back to the attendees.

As an example of passing costs back to attendees, assume you are sponsoring a class on internet marketing for real estate brokers. You spend \$200 on lunch, \$50 on room fees, \$10 on printed materials, and \$40 in speaker fees for a total cost of \$300. If there are 50 people taking the class, then each attendee must be charged at least \$6 for the class. Note there are no tolerances for costs per attendee under a certain amount. If it costs you anything to perform or sponsor the class, you must pass back those costs.

If the same costs were associated with a class on how to read a title commitment, or what to expect at the closing table, there is no need to pass back any costs to the attendees. *(Reg 3-5-1(6)(D)(6)(a), Reg 3-5-1(6)(F)(5))*

9. May a title entity “sponsor” an open house or other real estate broker event?

No. A title entity may not give money or any other thing of value to a real estate broker or other settlement producer in exchange for an advertising benefit at an event or which results in the substantial subsidization of the costs of that event. Title entities may participate in events if they maintain a physical presence throughout the event. For example, this means a title entity may have a table at an open house with refreshments and the title entity’s marketing materials if an employee of the entity is at all times present and engaging in the promotion of the entity’s services. *(Reg 3-5-1(6)(D)(6)(a), Reg 3-5-1(6)(F)(6)(c))*

10. May title entities provide sponsorships or participate in trade fairs or other industry events?

Title entities are permitted to participate in or provide limited sponsorships industry events such as trade fairs or golf tournaments, provided their costs do not result in substantial subsidization of the event, their costs bear a reasonable relationship to the benefits derived, and the event is a bona fide trade fair or industry association or trade group event (as opposed to a discreet settlement producer or company). *(Reg 3-5-1(6)(B), Reg 3-5-1(6)(D)(6)(a), Reg 3-5-1(6)(F)(6))*

11. What are the rules for sharing office space with a real estate company or mortgage company?

Title entities, whether engaged in an Affiliated Business Arrangement (AfBA) or not, are permitted to share office space with settlement producers, subject to the following conditions:

- Rent must be equal to the fair market value of comparable space within the geographic area. This means the price per square foot must conform to other available space for any other business in the area. The amount a real estate brokerage could get in desk fees from another broker is not acceptable as a determination of fair market value.
- The space must be clearly identified through appropriate signage as belonging to the title entity.
- The space must be able to be locked and secured independently from the settlement producer’s space.

- The space must be directly accessible to the public without passing through the primary workspace of the settlement producer. Office space off the main reception area is acceptable. Consumers should not have to pass through the settlement producer's desks or other workspace to get to the title entity's office.
- All consumers must be given a disclosure telling them that an office sharing arrangement exists. The notice also shall notify the consumer of their right to shop for and use a different title entity or settlement producer. This requirement applies for both AfBAs and independent entities.

(Reg 3-5-1(6)(D)(6)(e), Reg 3-5-1(6)(F)(7))

Section 7 – Consumer Protections

12. What constitutes a “reasonable search and exam”?

All title insurance companies (underwriters) are now required to create written standards for search and examination for use by title entities (underwriters and agencies). These standards must comply with sound underwriting practices. While it is difficult to place a set standard on search and examination (for instance, not every transaction may require a search back to patent), it should be understood that practices that do not allow for a reasonable view of a property's history are not permitted.

(Reg 3-5-1(7)(A), §10-11-106, C.R.S.)

13. What are the rules on Generic Exceptions (“garbage” exceptions)?

A generic exception is any overly broad exception that is not a standard or preprinted exception. A generic exception does not refer to a specific recorded document (e.g. Any and all roads, easements, rights of way, etc.). These exceptions are only permitted in cases where the proposed insured on a commitment has made a written request for a policy form that makes use of them. For practical purposes, it is expected that generic exceptions will only be used for such transaction as junior liens or lines of credit. It is anticipated that very few purchase transactions (i.e. owners' policies) will make use of these exceptions.

Aside from the standard or preprinted exceptions, all exceptions on a title commitment or policy must refer to the specific recording information on the document. If a document is not recorded, the title entity should reference any identifiable information on the document. The identifiable information may include dates, names of parties, case numbers, etc.

(Reg 3-5-1(7)(D), §10-11-106, C.R.S.)

Section 9 – Fiduciary Duties

14. What are the general rules for holding money?

All money belonging to others must be deposited in a bank account that is separate from other funds (although one account may be used to hold all money belonging to others – you do not need a separate account for each transaction). Examples include portions of premiums that will be sent to an underwriter, earnest money, loan proceeds, escrows, etc. This account must be labeled or named “fiduciary account”, “trust account”, “escrow account”, or other similar name that identifies the account as one to be used solely for holding these funds. A title entity is prohibited from mixing these funds with any others, such as business or personal funds. A title entity is also prohibited from using the funds for any purpose other than that set forth in writing for a specific transaction.

(Reg 3-5-1(9)(A), Reg 3-5-1(9)(B), §10-2-704, C.R.S.)

15. Can a title company use a sweep account for escrow accounts?

A title entity may deposit fiduciary funds (money belonging to others) into a sweep account or any type of account that uses that money as an investment or revenue generator. The title entity must get written authorization from the owner of that money before depositing it into the account. Not getting written authorization, or getting it after the money is in the account, will be viewed as a violation of the Regulation.

(Reg 3-5-1(9)(E))

16. Can a title company earn interest on an escrow account?

A title entity may earn interest on fiduciary funds as long as a disclosure is provided to all parties that interest has been or will be earned. The title entity must provide a means for payment of any earnings over and above an administrative fee. The disclosure may be given at any time up to and including closing. The disclosure must clearly state that a consumer may have the right to some of the interest earned (again, any money over any administrative fees involved in figuring the amounts earned). Any administrative fees charged by the title entity for this service must be on file with the Division before use (NOTE: These rules apply to voluntary CARHOF accounts; however, they do not limit or prohibit the requirements of attorneys to hold trust funds in COLTAF accounts.).

(Reg 3-5-1(9)(F))

17. What should a title company do if they receive earnest money without written instructions?

The new 3-5-1 provides a set of default instructions for title entities to follow if they receive funds without proper instructions. These instructions direct the entity to deposit the money into its escrow account and hold it pending receipt of instructions. If a deal fails, the instructions direct the entity to:

1. Release the money as directed by any instruction signed by both buyer and seller, or;
2. If there is no argument over who the money belongs to, hold it for 180 days, then return it to the original payor, or;
3. If there is an argument over who the money belongs to, either interplead all parties to the courts (i.e. turn the money over to the courts and let them decide who gets it), or send notice to all parties that the money will be returned to the original payor in 120 days if there are no court cases filed.

(Reg 3-5-1(9)(G))



**Heritage
Title Company**

Making Transactions Personal