

## **DEPARTMENT OF REGULATORY AGENCIES**

### **Division of Insurance**

#### **3 CCR 702-8**

#### **TITLE INSURANCE**

##### **Proposed New Regulation 8-1-1**

##### **TITLE INSURANCE RATES & FEES**

Section 1	Authority
Section 2	Scope and Purpose
Section 3	Applicability
Section 4	Definitions
Section 5	Rules Regarding Rate and Fee Filing Requirements
Section 6	Rules Regarding Rates and Fees
Section 7	Severability
Section 8	Enforcement
Section 9	Effective Date
Section 10	History
Appendix A	Title Insurance Closing and Settlement Fee Justification Form
Appendix B	Title Insurance Closing and Settlement Fee Filing Agency Fee Sheet for Consumers

##### **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, 10-3-1110, 10-4-403, 10-4-404, 10-11-118 C.R.S.

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

The purpose of this regulation is to ensure that title insurance rates and fees are not excessive, inadequate or unfairly discriminatory. This regulation contains filing requirements for both title insurance companies and title insurance agents. This regulation ensures that consumers receive the benefits of competition in the area of title insurance and ensures consumer protection.

##### **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.

#### **Section 4 Definitions**

- A. "Business of title insurance" shall have the same meaning as set forth in § 10-11-102(3), C.R.S.
- B. "Division" means, for the purposes of this regulation, the Colorado Division of Insurance.
- C. "Fee" means, for purposes of this regulation only, the amount other than the rate (see subsection F below) charged by a title entity for services performed pursuant to the business of title insurance as defined in § 10-11-102, C.R.S.
- D. "Justification" means, for the purposes of this regulation, information that establishes the rate or fee is not excessive, inadequate, or unfairly discriminatory pursuant to §10-4-403, C.R.S. This information must qualify, quantify, and demonstrate the facts and figures to support, defend, and substantiate a proposed rate or fee.
- E. "Person" has the same meaning as found at §10-2-103(8), C.R.S.
- F. "Rate" means, for purposes of this regulation, 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, profit, and commissions, in accordance with § 10-4-403, C.R.S.
- G. "Title insurance agent" shall have the same meaning as found at § 10-11-102(9), C.R.S.
- H. "Title insurance company" shall have the same meaning as found at § 10-11-102(10), C.R.S.
- I. "Title entity" means, for the purposes of this regulation, title insurance agents, title insurance agencies and title insurance companies, unless otherwise stated in the regulation.

#### **Section 5 Rules Regarding Rate and Fee Filing Requirements**

- A. Each title insurance company and each title insurance agent must submit a complying filing electronically, in a format prescribed by the Commissioner, with an effective date that is at least (30) days after the date the Division receives the filing electronically. A title insurance company's filing must include justification for any new or amended rate or fee being placed on file that a consumer may be charged. A title insurance agent's filing must include justification for any new or amended fee being placed on file that a consumer may be charged.
- B. Each title insurance company must place on file its own rates and fees and the justification to support the rates and fees. Each title insurance agent must place on file his or her own fees and the justification to support the fees. Title insurance agents that use multiple title insurance companies as underwriters must place on file and justify their own fees.
- C. General Rate Filing Requirements
  - 1. Each title insurance company must submit a rate filing electronically in the System for Electronic Rate and Form Filings (SERFF) database.
  - 2. Each filing must be received by the Division at least thirty (30) days prior to the effective date of the new or amended rates.
  - 3. Each filing must include justification for the new or amended rate being submitted. Justification must include data to support the rate. Justification includes, but is not limited to:
    - a. Expense provisions – data must clearly describe the amount of the fixed and/or variable expense provision and how this provision is to be accounted for in the final rate. This includes an itemization of actual expenses associated with each rate. Examples of some expenses include but are not limited to: amounts retained by or commissions paid to agents; claims; taxes; personnel; office space; office equipment; supplies; other overhead; and vendor services, etc.;
    - b. Expected losses and loss ratios;

- c. Rate history listing the effective date and percentage amount of any rate changes made in the past three (3) years for the rate(s) being changed;
  - d. Methodologies and material assumptions in developing the rate;
  - e. The amount and description of all profit and contingencies built into the rate;
  - f. A description of the rate and any and all services provided with the rate or fee. For example, when submitting a “bundled rate”, include a line item for each service included in the bundle;
  - g. If a comparative analysis is used as a portion of the rate justification, the insurer must include in the analysis the names of other insurers used in the analysis, and must demonstrate how the rates being compared are comparable in services and expenses; and
  - h. Any other determining factor used to develop the final rate.
4. Side-by-side comparison of the rating manual indicating the changes made in the current filing, the rate(s) prior to the change, and the new or amended rate(s).

**D. General Fee Filing Requirements**

1. Each title insurance agent must submit a fee filing electronically in the System for Electronic Rate and Form Filings (SERFF) database.
2. Each filing must be received by the Division at least thirty (30) days prior to the effective date of the new or amended fee.
3. Each filing must include justification for the new or amended fee being submitted. Justification must include data to support the fee. Justification includes, but is not limited to:
  - a. An itemization of any expenses associated to the new or amended fee. Expenses may include, but are not limited to: the actual expense of the fee, personnel, operations, leases/rent, equipment, business insurance, vendor services, office supplies, miscellaneous costs, and any pass-through expense;
  - b. The amount and description of all profit and contingencies built into the fee. If profit and contingency is zero for a particular fee, indicate zero;
  - c. General description of what is included in the services provided for the new or amended fee. For example, when submitting a “bundled fee”, include of all the services and fees that are included in the bundle;
  - d. If a comparative analysis is used as a portion of the fee justification, the agent must include in the analysis the names of other agent(s) used in the analysis, and must demonstrate how the fees being compared are comparable in services and expenses; and
  - e. Any other determining factor used to develop the final fee.
4. Side-by-side comparison of the fee schedule indicating the changes made in the current filing, the fee(s) prior to the change, and the new or amended fee(s).
5. A final copy of the fee sheet with the proposed new or amended fee.
6. “Title Insurance Closing and Settlement Fee Justification Form” which is found in Appendix A of this regulation, is required to be filed with the Division, and includes commonly used fees a consumer may be charged during a real estate transaction. The sheet(s) will be posted to the Division’s website for consumer use. Each title insurance agent must place on file his or her fees and any justification used by the title insurance agent.

**Section 6 Rules Regarding Rates and Fees**

- A. Every title entity shall make readily available for review by the public its schedule of effective rates and fees for all issued title insurance policies and closing and settlement charges, including endorsements, guarantees and other forms of title

insurance coverage. Either the schedule or a notice explaining the schedule's availability shall be displayed in a public place in the title entity's offices. Copies of such schedules shall be furnished to the public upon request. The title entity may impose a charge for copies of schedules, but such charges shall not exceed the actual cost per page of reproducing the schedules, and copies shall be provided within three (3) business days of receipt of a written request.

- B. All rate cards and schedules of effective rates and fees shall denote, in a clear and conspicuous manner, the title insurance company and/or agent that has filed the title insurance rates and fees shown and the effective date of these rates and fees.
- C. If justified, title entities may place on file different rates and fees for title insurance policies and/or closing and settlement services in different counties, and shall include the effective date of the rates and fees in the schedule.
- D. A title insurance company may not use different rates for different title insurance entities for the same risk in the same county.
- E. Rates and fees shall not apply to title commitments and/or policies or closing and settlement services ordered prior to the effective date of such rate or fee.
- F. No title entity shall quote any rate or fee to any person which is more or less than what is currently available to others for the same type of title insurance policy or service for the same amount of insurance, insuring title to property in the same county, same risk, and involving the same factors set forth in its then current schedule of rates and fees.
- G. No title entity may charge a rate or fee unless it is on file with the Division and in effect at the time that the title insurance commitment and/or policy or closing and settlement service is ordered.
- H. Title entities may charge additional fees when unusual conditions are encountered, special or unusual risks are insured against, and for special services rendered in connection with the issuance of a title insurance policy and/or closing and settlement services. If additional fees are charged, the title entities shall, in their fee schedules, disclose the terms and conditions for imposing said additional fees.
- I. Any title insurance commitment charge must have a reasonable relation to the cost of production of the commitment and cannot be less than the minimum rate or fee for the type of policy to be issued, as set forth in the insurer's current schedule of rates and fees.
- J. Any fee charged for a vesting deed, instrument of public record, an insured closing letter, closing protection letter, or for additional information related thereto, must be the same for all persons and not charged on an unfairly discriminatory basis and must be filed with the Division.
- K. Every title insurance agent shall file with the Division with each fee filing a "Title Insurance Closing and Settlement Fee Filing Agency Fee Sheet for Consumers" form, which is found in Appendix B of this regulation.
- L. Prohibited Practices

The Division has determined that certain rating practices lead to excessive, inadequate or unfairly discriminatory rates and are unfair methods of competition and/or unfair or deceptive acts or practices in the business of insurance. Therefore, in accordance with § 10-3-1110(1), C.R.S., it is considered an unfairly discriminatory practice for a company to include, in any component of a rate, any amount intended to recover losses or expenses incurred in another state or jurisdiction due to any referendum, law or regulation which requires a general reduction in rates. This subsection shall not prohibit the use of national, regional or other industry data as a necessary and actuarially supportable supplement to Colorado data that is not fully credible.

## **Section 7 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 8 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 9 Effective Date**

This regulation shall become effective on October 1, 2015.

**Section 10 History**

New regulation effective October 1, 2015.

**APPENDIX A - Title Insurance Closing and Settlement Fee Justification Form**

In accordance with § 10-11-118 (2), C.R.S. this form must be completed and submitted with any new, amended or withdrawn fee.

<b>COMPANY/AGENT NAME</b>				Title Insurance Closing and Settlement Fee Justification Form			
Effective Date:				NC=No Change (Include Current Amounts)			
<b>New</b>	<b>Amend</b>	<b>Withdraw</b>	<b>NC</b>	<b>New</b>	<b>Amend</b>	<b>Withdraw</b>	<b>NC</b>
Fee Name: _____				Fee Name: _____			
<b>Closing cost</b>				<b>Closing cost</b>			
Personnel-Salaries & Benefits		\$ _____		Personnel-Salaries & Benefits		\$ _____	
Office Space-Rents & Leases		\$ _____		Office Space-Rents & Leases		\$ _____	
Office Equipment & Software		\$ _____		Office Equipment & Software		\$ _____	
Office Supplies		\$ _____		Office Supplies		\$ _____	
Vendor Services		\$ _____		Vendor Services		\$ _____	
Business Insurance-Fidelity or				Business Insurance-Fidelity or			
Other similar coverages		\$ _____		Other similar coverages		\$ _____	
Miscellaneous Cost		\$ _____		Miscellaneous Cost		\$ _____	
Other		\$ _____		Other		\$ _____	
<b>Profit</b>		\$ _____		<b>Profit</b>		\$ _____	
<b>Total Cost and Profit</b>		\$ _____		<b>Total Cost and Profit</b>		\$ _____	
<b>New</b>	<b>Amend</b>	<b>Withdraw</b>	<b>NC</b>	<b>New</b>	<b>Amend</b>	<b>Withdraw</b>	<b>NC</b>
Fee Name: _____				Fee Name: _____			
<b>Closing cost</b>				<b>Closing cost</b>			
Personnel-Salaries & Benefits		\$ _____		Personnel-Salaries & Benefits		\$ _____	
Office Space-Rents & Leases		\$ _____		Office Space-Rents & Leases		\$ _____	
Office Equipment & Software		\$ _____		Office Equipment & Software		\$ _____	
Office Supplies		\$ _____		Office Supplies		\$ _____	
Vendor Services		\$ _____		Vendor Services		\$ _____	
Business Insurance-Fidelity or				Business Insurance-Fidelity or			
Other similar coverages		\$ _____		Other similar coverages		\$ _____	
Miscellaneous Cost		\$ _____		Miscellaneous Cost		\$ _____	
Other		\$ _____		Other		\$ _____	
<b>Profit</b>		\$ _____		<b>Profit</b>		\$ _____	

Total Cost and Profit	\$ _____	Total Cost and Profit	\$ _____
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**APPENDIX B - Title Insurance Closing and Settlement Fee Filing Agency Fee Sheet for Consumers**

COMPANY NAME AND ADDRESS:		Fees listed for closings in the following counties:	
_____		_____	
_____		_____	
_____		_____	
Effective Date:			
_____		_____	
<b>Sale/Purchase Closing Fee</b>			
<b>Basic Fee</b>	\$ _____	<b>Bundled Fee</b>	\$ _____
		Includes the following:	
Additional Fees		Closing Fee	\$ _____
Courier/Express Mail	\$ _____	Courier/Express Mail	\$ _____
Release/Release Tracking	\$ _____	Release/Release Tracking	\$ _____
Wire	\$ _____	Wire	\$ _____
Cashier's Check	\$ _____	Cashier's Check	\$ _____
Tax Certificate	\$ _____	Tax Certificate	\$ _____
Loan Document Retrieval (E-Doc)	\$ _____	Loan Document Retrieval (E-Doc)	\$ _____
HOA Document Retrieval	\$ _____	E-Recording	\$ _____
E-Recording (In addition to county recording charges)	\$ _____		
Flat Rate Recording	\$ _____	Other (specify): _____	\$ _____
Other (specify): _____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____		
<b>Refinance Closing Fee</b>			
<b>Basic Fee</b>	\$ _____	<b>Bundled Fee</b>	\$ _____
		Includes the following:	
Additional Fees		Closing Fee	\$ _____
Courier/Express Mail	\$ _____	Courier/Express Mail	\$ _____
Release/Release Tracking	\$ _____	Release/Release Tracking	\$ _____
Wire	\$ _____	Wire	\$ _____
Cashier's Check	\$ _____	Cashier's Check	\$ _____
Tax Certificate	\$ _____	Tax Certificate	\$ _____
Loan Document Retrieval (E-Doc)	\$ _____	Loan Document Retrieval (E-Doc)	\$ _____
HOA Document Retrieval	\$ _____	E-Recording	\$ _____
E-Recording (In addition to county recording charges)	\$ _____		
Flat Rate Recording	\$ _____	Other (specify): _____	\$ _____
Other (specify): _____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____		

\*\*\*\*\* END DOCUMENT \*\*\*\*\*