

## PROCEDURES FOR REVIEW OF TITLE AGENCY PROFITABILITY

Applicable codes and rules to consider:

31A-19a-209(3):

### **31A-19a-209(3)**

A title insurance insurer, individual title insurance producer, or agency title insurance producer may not file or use any rate or other charge relating to the business of title insurance, including rates or charges filed for escrow that would cause the title insurance company, individual title insurance producer, or agency title insurance producer to:

- (a) operate at less than the cost of doing:
  - (i) the insurance business; or
  - (ii) the escrow business; or
- (b) fail to adequately underwrite a title insurance policy.

31A-23a-413:

### **31A-23a-413. Title insurance producer's annual report.**

An agency title insurance producer and an individual title insurance producer who has not been designated by an agency title insurance producer shall annually file with the commissioner, by a date and in a form the commissioner specifies by rule, a verified statement of the agency title insurance producer's or individual title insurance producer's financial condition, transactions, and affairs as of the end of the preceding calendar year.

R592-11-4 & 5:

### **R592-11-4. Title Insurance Producer Annual Report.**

(1) Title insurance producers, as defined in R592-11-3, shall file a Title Insurance Producer Annual Report containing the information shown in subsection 2 below.

(2) A Title Insurance Producer Annual Report shall consist of:

(a) a balance sheet and an income and expense statement prepared and presented in conformity with generally accepted accounting principles;

(b) the name and address of each financial institution where a title or escrow trust account is maintained;

(c) unless the producer is an attorney exempted under 31A-23a-204(8), proof of financial protection that complies with Subsection 31A-23a-204(2) consisting of one or more of the following:

(i) a copy of the declarations page of a fidelity bond;

(ii) a copy of the declarations page of a professional liability insurance policy; or

(iii) a copy of the commissioner's approval of equivalent financial protection; and approved by the commissioner;

(d) the name, address, and percentage of ownership of each owner.

(3) A title insurance producer, as defined in R592-11-3, shall file a Title Insurance Producer Annual Report not later than April 30 of each year.

(4) The Title Insurance Producer Annual Report period shall be the preceding calendar year.

(5) A Title Insurance Producer Annual Report will be considered protected data if the producer submitting the report requests classification as a protected record in accordance with Sections 63G-2-305 and 63G-2-309.

#### **R592-11-5. Controlled Business Report.**

(1) A title insurance producer, as defined in R592-11-3, shall file an annual Controlled Business Report not later than April 30 of each year.

(2) The Controlled Business Report period shall be the preceding calendar year and shall contain the information required in Subsection 31A-23a-503(8)(a).

(3) A Controlled Business Report is a public record upon filing.

R592-15-7:

#### **R592-15-7. Charges.**

(1) Escrow Service Charges.

(a) In accordance with subsection 31A-19a-209(3), no charge may be filed or used that would cause the agency title insurance producer or individual title insurance producer to operate at less than the cost of doing the business of escrow.

(b) Only minimum escrow charges shown in the Schedule of Minimum Charges for Escrow Services must be filed.

(2) Other Settlement Services Charges.

(a) other settlement services charges will be used for services not specifically shown in the Schedule of Minimum Charges for Escrow Services.

(b) other settlement service charge must be filed as a per hour charge.

(3) Document Preparation Charge.

Only document charges shown in the Schedule of Minimum Charges for Escrow Services must be filed.

(4) Other services which are not specifically listed on the Schedule of Minimum Charges for Escrow services may be rendered provided a justifiable charge is made.

Procedure:

- Review each title agency submission for completeness of filing
- If not complete, reject and ask for resubmission of completed information
- Review for title insurance and escrow, separately for requirements of not operating at a loss in either area
- Compare current year with previous year(s)
- Audit those agencies that do not comply with statute and rules
- Suggested solutions could include:
  - Justification of rates being charged
  - Business Plan to establish how they can become profitable within 12 months, with an immediate implementation to begin to reduce expenses and/or increase profitability
  - 24 month probation
  - Quarterly reporting of financials
  - CPA certified financials annually
  - Is there a tolerance level (ie: \$1000 negative) that may change remedial options
- Imposition of a fine, partially or all 'waived' upon completion of other specified requirements.

Reporting:

- Create a spreadsheet that can aggregate (or average) the totals for net income and net expenses for title and for escrow, trend year to year (**no individual agency numbers**)