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BULLETIN 12-28

Date: November 20, 2012

To: All title insurers, title insurance producers, and title insurance agencies writing title insurance in Maryland

Re: Draft Proposed Regulation 31.04.22

The purpose of this Bulletin is to notify all title insurers, title insurance producers, and title insurance agencies writing title insurance in Maryland of the draft proposed regulations and to solicit comments from interested parties prior to finalizing and formally submitting the proposed regulations to the Joint Committee on Administrative Executive and Legislative Review (AELR) for review and to the Division of State Documents for publication in the *Maryland Register*. The authority for the regulations can be found in Insurance Article §§ 2-108, 2-109, 10-121, and 10-128.1 Annotated Code of Maryland.

A copy of the draft proposed regulations is attached to this Bulletin. The regulations would define the minimum standards and procedures for conducting an on-site review, and provide for a required on-site review report in a format adopted by the Commissioner.

Written comments will be accepted for thirty days from the date of the Bulletin's issuance. All comments should be addressed to Nancy Egan, Assistant Director, Government Relations, at negan@mdinsurance.state.md.us. If there are any questions, direct them to Ms. Egan at 410-468-2488.

Therese M. Goldsmith
Insurance Commissioner

signature on original

By:

Thomas Marshall
Associate Commissioner
Compliance and Enforcement

Title 31

MARYLAND INSURANCE ADMINISTRATION

Subtitle 04 INSURERS

Chapter 22 Title Insurers

Authority: Insurance Article §§ 2-108, 2-109, 10-121, and 10-128.1 Annotated Code of Maryland

.01 Applicability.

This chapter applies to a title insurer, title insurance producer, and title insurance agency.

.02 Scope.

- A. This chapter establishes the minimum standards and procedures for conducting an on-site review; and*
B. Provides for a required on-site review report in a format adopted by the Commissioner.

.03 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

- (1) "Accounts" means any and all accounts associated with the principal agent's title insurance business.*
- (2) "Appointment" has the meaning set forth in Insurance Article § 1-101(f), Annotated Code of Maryland.*
- (3) "Certification" means a statement in writing signed by the principal agent that the information provided to the title insurer during the on-site review is, to the best of the principal agent's knowledge, information, and belief, a full, complete, and truthful response to the Commissioner's request and that the principal agent has undertaken an adequate inquiry to make the required certification.*
- (4) "Claim" has the meaning set forth in Code of Maryland Regulations ("COMAR") 31.15.07.02B(2).*
- (5) "Commissioner" means the Maryland Insurance Commissioner or the Commissioner's designee.*
- (6) "Dormant Account" means any escrow account which for three (3) consecutive months has not been used for a settlement or received an incoming wire.*
- (7) "Escrow" means the act or process of providing closing services or services pursuant to an escrow agreement by a title insurer or a principal agent.*
- (8) "Escrow Account" means an account containing trust money deposits or other money that a person entrusts to a title insurer or its principal agent to hold for the benefit of a buyer or borrower in a real estate transaction or for a beneficial owner, in connection with an escrow, settlement, closing or title indemnification.*
- (9) "Insurer" has the meaning set forth in Insurance Article § 1-101(v), Annotated Code of Maryland.*
- (10) "Insurance" has the meaning set forth in Insurance Article § 1-101(s), Annotated Code of Maryland.*
- (11) "Insurance business" has the meaning set forth in Insurance Article § 1-101(t), Annotated Code of Maryland.*
- (12) "Insurance producer" has the meaning set forth in Insurance Article § 1-101(u), Annotated Code of Maryland.*
- (13) "Licensed insurance producer" has the meaning set forth in Insurance Article § 1-101(w), Annotated Code of Maryland.*
- (14) "Licensee" means a title insurer, title insurance producer, and title insurance agency.*
- (15) "MAHT" means the Maryland Affordable Housing Trust established under the Housing and Community Development Article § 10-102, Annotated Code of Maryland.*
- (16) "On-Site Review" means an audit of the underwriting, claims, and escrow practices of each principal agent conducted by a title insurer at the principal agent's principal place of business in the State and, if the principal agent's information to be reviewed is not kept at its principal place of business in the State, then at each site where such information is kept.*
- (17) "Principal Agent" means a title insurance producer or title insurance agency that holds an appointment with a title insurer.*
- (18) "Report" means the written report required under Insurance Article § 10-121(k)(2), Annotated Code of Maryland, in a form adopted by the Commissioner.*
- (19) "Title Agency" has the meaning set forth in Insurance Article § 10-125(a)(4), Annotated Code of Maryland.*
- (20) "Title Insurance" has the meaning set forth in Insurance Article § 1-101(qq), Annotated Code of Maryland.*
- (21) "Title Insurance Producer" has the meaning set forth in Insurance Article § 10-101(i), Annotated Code of Maryland.*

(22) "Title Insurer" means an insurer authorized by the Commissioner to conduct title insurance business in the State.

(23) "Trust Money" has the meaning set forth in Insurance Article § 10-121(a), Annotated Code of Maryland.

(24) "Underwriting Standards" has the meaning set forth in COMAR 31.04.16.02.

.04 Conducting an On-Site Review.

A. A title insurer shall:

(1) Except as provided in §A(4) of this regulation, conduct an on-site review during each calendar year of the underwriting, claims, and escrow practices of each principal agent;

(2) Conduct an on-site review during normal business hours;

(3) Not be required to provide advance notice to the principal agent of the commencement of an on-site review; and

(4) Not be required to conduct an on-site review of a principal agent for the calendar year during which the principal agent is initially appointed, if the appointment is made on or after June 30 of that calendar year.

B. The on-site review required under §A of this regulation shall, at a minimum, include:

(1) A determination of whether a principal agent is in compliance with the title insurer's underwriting standards in the State;

(2) A review and evaluation of a principal agent's processing operations including whether the principal agent performed the following in connection with the acceptance of a title insurance policy premium for mortgagee insurance:

(i) Inserted the name of each insured in the binder for the title insurance or the title report; and

(ii) Delivered to the buyer or agent or attorney of the buyer immediately upon receipt of the premium, written notice of the name of each insured under the title insurance policy, the face amount of the title insurance policy, the buyer's right and opportunity to obtain simultaneous title insurance in the buyer's favor, written notice of the additional premium that will be required for the purchase of simultaneous title insurance in the buyer's favor;

(iii) Obtained from the buyer a written statement that he or she received the notice referenced in § .04B(2)(ii) of this regulation;

(3) A review and reconciliation of a principal agent's policy blank inventory;

(4) To the extent that a title insurer delegates, either expressly or impliedly, responsibility to a principal agent to handle any aspect of a claim, including payment of a claim, a determination of whether a principal agent is in compliance with the title insurer's policy and procedure for handling a claim;

(5) Verification that a principal agent has filed the annual report required under COMAR 31.16.03.06;

(6) Verification that only a licensed title insurance producer exercises control over trust money; and

(7) A review of the escrow practices of the title producer or title agency.

C. If the principal agent does not maintain separate bank or trust accounts for each title insurer it represents, the title insurer shall verify that the trust deposits held on its behalf are reasonably ascertainable from the books of account and records of the principal agent.

D. Verification that premium monies are held separate from other funds unless the principal agent provides the title insurer with a copy of the express written consent of the title insurer in the form required by COMAR 31.03.03.04 to co-mingle premium monies with the principal agent's personal funds.

E. A determination of whether the principal agent's escrow accounts have been properly reconciled and contain sufficient funds to disburse all settlement files.

.05 Failure to Cooperate.

A. A principal agent's failure to cooperate with a title insurer at the commencement of or during an on-site review shall constitute reasonable cause to believe that the principal agent has engaged in a prohibited activity under Insurance Article § 10-126, Annotated Code of Maryland.

B. A title insurer shall, within five calendar days of a principal agent's failure to cooperate, notify the Commissioner in writing that a principal agent has failed to cooperate at the commencement of or during an on-site review and shall include the following information:

(1) The name, address, telephone number, and email address of the principal agent;

(2) The principal agent's producer license number;

(3) The date(s) on which the principal agent failed to cooperate; and

(4) A description of the facts and circumstances of the principal agent's failure to cooperate.

.06 Report.

A. A title insurer shall complete the report within thirty calendar days after the completion of the on-site review.

B. The form adopted by the Commissioner sets forth the minimum required components of the report and does not preclude a title insurer from providing a more comprehensive description of the on-site review.

C. If the title insurer is required to provide an explanation for any of the information it provided in the report, the title insurer shall submit the report to the Commissioner within five calendar days of completing the report.

D. The report shall contain the certification from the principal agent.

.07 Prohibited Activities.

A. If a title insurer has reason to believe that the principal agent has engaged in, or is engaging in, conduct that is prohibited by Insurance Article § 10-126, Annotated Code of Maryland, the title insurer shall notify the Commissioner in writing within five calendar days.

B. The written notification shall include the following information:

- (1) The name, address, telephone number, and email address of the principal agent;
- (2) The principal agent's producer license number;
- (3) The date on which the title insurer had reason to believe the principal agent had engaged in, or was engaging in, conduct prohibited by Insurance Article § 10-126, Annotated Code of Maryland; and
- (4) A detailed description of the principal agent's conduct.

.08 Maintenance of Records.

A. A licensee shall maintain for a period of five years after the conclusion of an on-site review, and make available to the Commissioner upon request, all documentation collected, prepared, and produced by the licensee during an on-site review including, but not limited to, work papers, summaries, daily log notes, and the report.

B. Records required by this regulation may be maintained in paper, photographic, magnetic, mechanical, or electronic media or by any process that accurately reproduces the actual document, if the copy of the record is maintained in a manner that:

- (1) Is clear and legible;
- (2) Accurately reproduces the original document in its entirety, including any attachments to the document;
- (3) Is capable of producing a clear and legible hard copy of the original document; and
- (4) Preserves evidence of any signature contained on the document.