

**RULE 87
TITLE INSURANCE**

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SECTION 1. PURPOSE

The purpose of this Rule is to implement Act 684 of 2007 (the “Arkansas Title Insurance Act”) and to set the standards and guidelines for applicants seeking Title Insurance Agent licenses in the State of Arkansas.

SECTION 2. AUTHORITY

The authority for this Rule is power given to the Insurance Commissioner for the State of Arkansas by Act 684 of 2007 (the “Arkansas Title Insurance Act”), and other applicable laws.

SECTION 3. APPLICABILITY AND SCOPE

- A. This Rule shall apply to all applicants seeking a title insurance agent or agency license under the Arkansas Title Insurance Act, Ark. Code Ann. §§ 23-103-401 et seq.
- B. This Rule shall apply to title insurance agents or agencies previously licensed pursuant to the repealed Arkansas Title Insurance Agents' Licensing Act, §§ 23-103-101 et seq. who continue to meet all the residency and other requirements of the Arkansas Title Insurance Act and this Rule, effective January 1, 2008.
- C. This Rule shall apply to title insurers, title insurance agents, and title insurance agencies.
- D. The following are exempt from this Rule:
 - (1) In accordance with Ark. Code Ann. § 23-103-402 (11)(B), an individual employed by a licensee under the Arkansas Title Insurance Act who does not sell or negotiate title insurance, but performs marketing duties directed to depository institutions or licensed real estate brokers and agents on behalf and under the direction of such licensee;
 - (2) In accordance with Ark. Code Ann. § 23-103-402 (11)(B), an individual employed by a resident licensee under the Arkansas Title Insurance Act who is a closing agent and does not solicit, sell, or negotiate title insurance; and
 - (3) Those not required to have a license under the Arkansas Title Insurance Act.

SECTION 4. DEFINITIONS

As used in this Rule,

- 1. "Commissioner" shall mean the Insurance Commissioner of the State of Arkansas.
- 2. "Department" shall mean the Arkansas Insurance Department.
- 3. "Rule" shall mean the rules promulgated by the Arkansas Insurance Department unless the context requires otherwise.
- 4. "Title Insurance Agent" shall mean a person who is authorized on behalf of a title insurer to issue a title insurance report or title insurance policy and

participates in the solicitation, negotiation or sale of title insurance, including a licensed Arkansas resident or a licensed nonresident employed by a resident licensee, under the Title Insurance Act, codified at Ark. Code Ann. §§ 23-103-401 et seq.

- (a) "Authorized" shall mean that the agent holds an appointment with the title insurer.
 - (b) "Person" shall mean any natural person, or any partnership, association, cooperative, corporation, firm, trust, limited liability company, or other legal entity.
 - (c) A title insurance agent who is not a natural person may hereinafter be referred to as a "title insurance agency". Every title insurance agency must be based in Arkansas and have a qualified or active title insurance agent affiliated with the title insurance agency.
 - (d) The term "insurance producer" includes title insurance agents for purposes of the Producer Licensing Model Act, codified at Ark. Code Ann. §§ 23-64-501 et seq.
5. "Title insurance policy" means a contract, including any coverage, enhancements to coverage, or endorsements, insuring or indemnifying owners of, or other persons lawfully interested in, personal or real property against loss or damage arising from any or all of the following conditions existing on, before, or subsequent to the policy date and not specifically excepted or excluded:
- (a) Defects in or liens or encumbrances on the insured title;
 - (b) Unmarketability of the insured title;
 - (c) Invalidity or unenforceability of liens or encumbrances on the insured title of the personal or real property;
 - (d) Title being vested other than as stated in the policy;
 - (e) Lack of a legal right of access to the land that is part of the insured title in a policy relating to real property;
 - (f) Lack of priority of the lien of any insured mortgage over any statutory lien for services, labor, or materials as specifically described in the policy;
 - (g) Invalidity or unenforceability of any assignment of an insured mortgage subject to certain conditions; or

- (h) The priority of any lien or encumbrance over the lien of the insured mortgage.
- 6. "Title Insurer" shall mean a company authorized under the laws of this state to transact title insurance business.

SECTION 5. LICENSE QUALIFICATIONS

A. ELIGIBILITY

- (1) The license applicant must be at least eighteen (18) years of age or if not of legal age, minority rights must be removed by a court order and a copy of the court order must be forwarded along with the application and fees.
- (2) The applicant must be a resident of the State of Arkansas or a nonresident employed by a resident licensee.
 - (a) A "resident title insurance agent" is an agent whose residence is in or who may vote in this state or who is licensed as a resident insurance producer by the Commissioner in accordance with §§ 23-64-501 et seq.
 - (b) Residency by a title insurance agency must be demonstrated by a place of business accessible to the public wherein the licensee principally conducts transactions.
 - (c) A nonresident may be eligible for licensure if he/she is employed by a resident licensee and meets the other eligibility requirements of this Section.
- (3) The applicant must be deemed by the Commissioner to be competent, trustworthy, financially responsible, and of good personal and business reputation.
- (4) The applicant must have two thousand (2000) hours of prior title work experience and must submit a notarized affidavit from applicant's current or prior employer attesting to same.
 - (a) If unable to obtain verification from a prior employer, the applicant may request a waiver from the Commissioner. The request must specify the grounds to be relied upon as a basis for the waiver.
 - (b) The Commissioner may hold a hearing to determine whether a waiver may be granted.

- (5) The applicant must pass a written examination demonstrating competence to act as a title insurance agent. The Commissioner may give, conduct, and grade all examinations, or may arrange to have examinations administered and graded by an independent testing service, in a fair and impartial manner, and without unfair discrimination as between individuals examined. An oral or other type examination may for good cause be substituted for a written examination of the applicant on his/her written request, and if deemed necessary by any applicable laws, including but not limited to The Americans with Disabilities Act (ADA). The Commissioner shall require a waiting period of thirty (30) days before reexamination of an applicant.
- (6) The applicant for the title insurance license or renewal license shall be required to annually complete continuing education hours as established in Section 6 of this Rule.
- (7) The applicant shall be subject to a criminal background check as part of the application process.

B. APPLICATION

- (1) Each applicant for the title insurance agent's license shall complete and submit the written application form, in format prescribed by or acceptable to the Commissioner, accompanied by required notarized affidavit confirming title work experience of the applicant, and accompanied by the requisite fees established by a separate Rule. Such fees shall be payable to "The State Insurance Department Trust Fund", and are nonrefundable.
- (2) Each applicant must complete an Arkansas State Police Individual Record Check Form (ASP-122) using the applicant's full name and attach it to the Department's application for exam permit. The form must be signed and notarized by an Arkansas Notary Public. Such fees shall be payable to "The State Insurance Department Trust Fund" and must be attached to the form. Payment for the ASP-122 cannot be in the form of a personal check.

C. LICENSE ISSUANCE AND ANNUAL RENEWAL

- (1) The Commissioner may issue the license for title insurance agents to individuals meeting all applicable qualifications of this Rule, including successful examinations and payment of proper fees. The Commissioner shall issue a license on a form prescribed to the title insurance agent upon successful completion of these requirements by the applicant. The term of the title insurance agent license shall be one year. Within one year from

issuance date, the license shall be renewable on or before the licensee's birthday, and annually on the birthday thereafter. For an agency license, the renewal date will be a date certain.

- (2) The title insurance agent shall remit the annual renewal fee and Rule 57 Administrative and Regulatory Fee ("ARF"), as required in Act 1004 of 1997, on or before the licensee's renewal date, under Section 7 of this Rule, to the Department made payable to "The State Insurance Department Trust Fund".

D. LICENSE CONTINUATION

- (1) Licenses of individual persons granted title insurance agent licenses prior to the effective date of this Rule shall continue in full force and effect, but subject to the provisions of this Rule, including applicable residency requirements, and without the necessity to requalify hereunder except as to the effect or impact of licensing provisions as to felons under Arkansas Act 217 of 1997, codified as Ark. Code Ann. §§ 23-66-501 et seq. Current licensees shall be subject to a criminal background check.
- (2) A title insurance agent who allows his or her license to lapse may reinstate the same license within twelve (12) months after the due date of the renewal fee without the necessity of passing a written examination. However, a penalty in the amount of double the unpaid renewal fee shall be required for any renewal fee received after the due date.
- (3) A licensed title insurance agent who is unable to comply with license renewal procedures due to military service or some other extenuating circumstance may request a waiver of those procedures. The request must specify the grounds to be relied upon as a basis for the waiver.

- E. **LAWS APPLICABLE.** Except where they conflict with the Arkansas Title Insurance Act or this Rule, title insurance agents will also be subject to the applicable provisions of the Insurance Code, Ark. Code Ann. §§ 23-64-101 et seq., and other Department Rules pertaining to insurance producers.

SECTION 6. CONTINUING EDUCATION

A. Number of Course Hours

Upon the effective date of this Rule, any non-exempt persons licensed as title insurance agents shall, annually on or before their birthdays, complete those courses of continuing education instruction approved by the Commissioner and equivalent to a total of six (6) hours of instruction which must include one (1) hour of ethics.

B. Exemption Period

Newly licensed title insurance agents must be licensed for one (1) full year prior to renewal of the license before continuing education requirements are imposed. Example: If a new title insurance agent becomes licensed in June of 2008, and the expiration of the license is February 2, 2009, the producer must pay the renewal fee, but continuing education is not due until February 2, 2010, because the exemption period of one (1) year has not been reached prior to the 2009 expiration date.

C. Penalties

Upon failure of any title insurance agent to comply with Ark. Code Ann. §§ 23-64-301 et seq., the Commissioner shall take the steps enumerated in Ark. Code Ann. § 23-64-304(d) against such individual's license. Failure to comply with this Rule may result in imposition of penalties contained in Ark. Code Ann. § 23-64-216, as amended, or other applicable laws or rules.

D. Course Approval and Valuation

(1) Subject to submission and approval of the Commissioner, the courses or programs of instruction successfully completed which shall be deemed to meet the Commissioner's standards for title continuing education requirements and meeting the continuing education requirements of Rule 50 are:

- (a) Any title insurance related course approved by the Commissioner and offered by an accredited college or university;
- (b) Any course or program of instruction, seminar, or meeting sponsored by any authorized insurer, recognized title insurance agent association, insurance trade association, or any independent program of instruction;
- (c) Subject to approval by the Commissioner, the active annual membership of the licensed title producer in local, regional, state, or national professional insurance organizations or associations may be approved for up to two (2) annual hours of instruction. These hours shall be credited upon timely filing with the Commissioner by roster from the member organization or association;
- (d) Any title insurance correspondence course with a proctored exam which meets the standards of a correspondence course established in Rule 50; and

- (e) Any part of the study for an industry recognized professional designation for title insurance professionals.

(2) Course Hour Valuation

The Commissioner shall assign the number of continuing education hours for which approved courses qualify based on standards established in Rule 50.

SECTION 7. FEES

Fees shall be established by a separate Rule.

SECTION 8. REVOCATION AND SUSPENSION OF LICENSE

- A. The Commissioner may suspend or revoke upon notice and a hearing, or nonrenew or refuse to continue without notice and a hearing the license of any title insurance agent who has failed to comply with the license continuation provisions of this Rule and Ark. Code Ann. §§ 23-64-301 et seq., including failure of the title insurance agent to remit or timely remit the annual fees to the Commissioner. Alternatively the Commissioner may, in her discretion, impose a monetary penalty in the amounts contained in Ark. Code Ann. § 23-64-304.
- B. The Commissioner may suspend, revoke, or nonrenew or refuse to continue the license of any title insurance agent who is in violation of or noncompliance with the provisions of the Unfair Trade Practices laws of the State under Ark. Code Ann. §§ 23-66-201 et seq., and §§ 23-66-301 et seq., or with the license provisions under Ark. Code Ann. §§ 23-64-101 et seq., §§ 23-64-501 et seq., particularly § 23-64-512 or is in violation of the laws of the State of Arkansas, the Insurance Code, or Insurance Department Rules.
- C. Administrative proceedings under this Rule shall be conducted under the Administrative Procedure Act, Ark. Code Ann. §§ 25-15-201 et seq. as applicable, or under the provisions of the Insurance Code under Ark. Code Ann. §§ 23-61-301 et seq.
- D. Upon any revocation, suspension, cancellation, expiration or lapse, the title insurance agent license shall be returned to the Department as the property of the State of Arkansas.

SECTION 9. TITLE INSURANCE AGENT RESTRICTIONS

A licensed title insurance agent is not allowed to:

1. Bind reinsurance on behalf of the title insurer;
2. Permit any of its directors, officers, controlling shareholders, or employees to serve on the title insurers' board of directors if the title insurance agent wrote five percent (5%) or more of the direct premiums of the title insurer written in the previous calendar year as shown on the title insurer's most recent annual statement filed with the Commissioner, unless the title insurer and title insurance agent are under common control or ownership;
3. Jointly employ an individual who is employed with the title insurer unless the title insurer and the title insurance agent are under common control or ownership;
4. Issue a title insurance report or policy insuring the interest of an insured in real property in this state unless the title insurance agent is properly licensed and the title insurance report or policy is signed by a properly licensed title insurance agent; or
5. Provide legal advice concerning the status of title to the property described in the title commitment, unless the title insurance agent is a licensed Arkansas attorney. Complaints alleging unauthorized practice of law will be referred to the Office of the Arkansas Supreme Court Committee on Professional Conduct.

SECTION 10. TITLE INSURANCE POLICIES

- A. No title insurance policy or application form when written application is required and is to be made part of the policy shall be issued, delivered, or used as to a subject of insurance located in this state unless the form has been filed by the title insurer with and approved by the Insurance Commissioner in accordance with Ark. Code Ann. § 23-79-109.
- B. Every title insurance report or policy shall be executed in the name of and on behalf of the title insurer by its officer, attorney-in-fact, or employee, and countersigned by a licensed title insurance agent authorized by the insurer.
- C. A facsimile or electronic signature of any executing individual may be used in lieu of an original signature.
- D. The license number of the title insurance agent countersigning a title insurance report or policy shall be printed or legibly written beneath the title insurance agent's signature.

- E. The name of the title insurance agent authorized to issue the report or policy on behalf of the title insurer shall appear on all reports and policies issued by the title insurance agent.
- F. Any title insurance policy issued and otherwise valid which contains any condition or provision not in compliance with the requirements of the Insurance Code shall not be rendered invalid, but shall be construed and applied with such conditions and provisions as would have applied had the policy been in full compliance with the Insurance Code.
- G. The review, approval, disapproval and withdrawal of any prior approval by the Commissioner of any title insurance policy form shall be done in accordance with Ark. Code Ann. § 23-79-109, Ark. Code Ann. § 23-79-110, and Ark. Code Ann. §§ 23-61-301 *et seq.*

SECTION 11. INVENTORY MAINTENANCE

The title insurer and the title insurance agent shall each maintain an inventory of all numbered policy forms or policy numbers assigned to the title insurance agent by the title insurer.

SECTION 12. AUDIT

A. Minimum Requirements

- (1) At least one (1) time each year, a title insurer shall conduct an on-site audit of its appointees' escrow accounts, security arrangements, files, underwriting and claims practices, closing protection letters, and policy inventory of the title insurance agencies which it has authorized to issue title insurance reports or policies on its behalf.
- (2) If the title insurance agent fails to maintain separate escrow or trust accounts for each title insurer it represents, the title insurer shall verify that the funds related to closings in which the title insurer's policies are issued are reasonably ascertainable from the books of account and records of the title insurance agent.

- B. A combined audit must encompass the activities of all affiliates to which title insurance agents or title insurance agencies are appointed.

SECTION 13. RECORD RETENTION

The title insurer and the title insurance agent shall maintain sufficient records of their affairs, including evidence of underwriting title, determination of insurability and records of its escrow operations and escrow accounts for a period of time no less than seven (7) years.

SECTION 14. SETTLEMENT OR CLOSING PROTECTION

- A. The title insurance agent, on behalf of the title insurer, shall offer settlement or closing protection coverage to the parties and shall obtain their election in writing.
- B. Settlement or Closing Protection Letters shall, if requested by a party to a closing handled by the title insurance agent, be issued to the requesting party for a charge payable solely to the insurer and may indemnify against loss of settlement funds that occur in connection with the closing, including theft of settlement funds and failure to comply with written closing instructions. Nothing herein limits or restricts title insurers from offering greater coverage.
- C. The form and amount charged by a title insurer for settlement or closing protection coverage shall be filed with the Commissioner at least twenty (20) days before the first use of settlement or closing protection coverage in the market in accordance with Ark. Code Ann. § 23-103-405(c)(4).
- D. Every Settlement or Closing Protection letter shall include, at a minimum, the following provisions, coverages and exclusions:
 - (1) The parties to be afforded protection along with a brief description of their relationship to the transaction covered;
 - (2) A description of the transaction for which the letter is being issued;
 - (3) Provide coverage for the failure of the title insurance agent, any title insurance agency, or person conducting a closing of the transaction to comply with any written closing instructions to the extent that they relate to:
 - (a) The status of the title to said interest in land or the validity, enforceability and priority of any lien of a mortgage on this interest in land, including obtaining any documents or the disbursement of funds necessary to establish such status of title or lien;
 - (b) Obtaining any other document, specifically required by any party to the transaction, but only to the extent the failure to obtain such other document affects the status of the title to said interest in land

or the validity, enforceability and priority of the lien of any mortgage on the interest in land; or

- (c) Fraud in handling of any funds or documents in connection with such closings to the extent such fraud relates to the status of the title to said interest in land or to the validity, enforceability, and priority of the lien of any mortgage on the interest in land.
- (4) A provision that if the letter is issued at the request of a lender that its assignees, successors, assigns, debtors, and warehouse lenders shall be protected as if the letter were requested by and directed to them by the title insurer;
- (5) A provision allowing the title insurer to be subrogated to all rights and remedies which a party recovering under the letter would have had against any person or property had the party not been so reimbursed. The liability of the title insurer for any amounts paid to a party shall be reduced to the extent that the party has knowingly and voluntarily impaired the value of such right of subrogation;
- (6) A provision allowing the title insurer the ability to recover from the party asserting a claim under the letter for any reimbursement such party received for which the insurer has previously paid the party under the letter. The liability of the title insurer for any amounts paid to a party shall be reduced to the extent that the party has knowingly and voluntarily impaired the value of such right to such reimbursement;
- (7) A provision providing any liability of the title insurer for loss incurred by a party in connection with the closing of the transaction by a title insurance agent, agency, or person closing the transaction, may be limited to the protection provided by the letter, but shall not affect the protection afforded by a title insurance binder, commitment or policy of the title insurer;
- (8) That claims under the letter shall be made promptly to the title insurer at its principal office as set forth in the letter. When the failure to give prompt notice shall diminish the amount the title insurer could have recovered in the absence of the delay, the liability of the title insurer hereunder may be reduced to the extent of such diminution;
- (9) Provide the state or states to which the coverage afforded by the letter applies; and
- (10) May contain one or more of the following exclusions which will relieve the title insurer issuing the letter from liability there under:

- (a) Failure of the title insurance agent, agency, or person closing the transaction, to comply with any closing instructions which require title insurance protection inconsistent with that set forth in the title insurance binder or commitment issued by the title insurer. Instructions which require the removal of specific exceptions to title or compliance with the requirements contained in said binder or commitment shall not be deemed to be inconsistent;
- (b) Loss or impairment of any funds in the course of collection or while on deposit with a bank due to bank failure, insolvency or suspension, except such as shall result from failure of the title insurance agent, agency, or person closing the transaction, to comply with any written closing instructions to deposit the funds in a bank which you designated by name;
- (c) Mechanics' and materialmen's liens in connection with the transaction, except to the extent that protection against such liens are afforded by a title insurance binder, commitment or policy of the title insurer;
- (d) Failure of the title insurance agent, agency, or person closing the transaction, to comply with any written closing instructions to the extent such instructions require a determination by the title insurance agent, agency, or person closing the transaction, of the validity enforceability or effectiveness of any document contemplated under Subsection D (3)(b) above;
- (e) A settlement or release of any claim without the written consent of the title insurer;
- (f) Any matters created, suffered, assumed or agreed to by, or known by any party to the transaction; or
- (g) Any exclusion approved by the Insurance Commissioner.

SECTION 15. MINIMUM SEARCH REQUIREMENTS

- A. The title insurance report or policy shall be based upon a search of the title from the evidence prepared from a title plant or from the records of the clerk or the ex-officio recorder of the land records of the county that maintains records relating to real estate. No title insurance policy shall be issued until the title insurer or title insurance agent has caused to be made a determination of insurability of title in accordance with the title insurer's underwriting practices.

- B. The search must include a review of all matters affecting title to the property or interest for a continuous period of no less than the preceding thirty years (30).
- C. Evidence upon which the search is based may include:
 - (1) Any policy upon which the title insurance agent is willing to rely, subject to a determination of insurability of title in accordance with the title insurer's underwriting practices;
 - (2) Abstracts of title;
 - (3) Title plant records;
 - (4) County records of the ex-officio recorder; or
 - (5) Any combination thereof that cover a continuous period of no less than the immediately preceding thirty (30) years.

SECTION 16. DUTIES OF TITLE INSURERS

- A. The title insurer shall not accept business from a title insurance agent unless there is in force a written contract between the parties which sets forth the responsibilities of each party and, where both parties share responsibility for a particular function, specifies the division of responsibilities.
- B. The title insurer shall, at least annually, conduct an on-site audit of its appointees' underwriting, claims and escrow practices, which shall include a review of the title insurance agent's policy blank inventory and processing operations.
 - (1) If the title insurance agent does not maintain separate bank or trust accounts for each title insurer it represents, the title insurer shall verify that the funds held on its behalf are reasonably ascertainable from the books of account and records of the title insurance agent.
 - (2) A combined audit must encompass the activities of all affiliates to which title insurance agents or title insurance agencies are appointed.
- C. Within thirty (30) days of executing or terminating a contract with a title insurance agent, the title insurer shall provide written notification of the appointment or termination and the reason for termination to the Commissioner. Notices of appointment of a title insurance agent shall be made on a form promulgated by the Commissioner.
- D. A title insurer shall not appoint to its board of directors an officer, director, employee or controlling shareholder or any title insurance agent who wrote five

percent (5%) or more of the title insurer's direct premiums written during the previous calendar year as shown on the title insurer's most recent annual statement on file with the Commissioner. This subsection shall not apply to relationships governed by §§ 23-63-501 et seq.

- E. The title insurer shall maintain an inventory of all policy forms or policy numbers allocated to each title insurance agent.
- F. The title insurer shall have on file proof that the title insurance agent is licensed by this state.
- G. The title insurer shall establish the underwriting guidelines and, where applicable, limitations on title claims settlement authority to be incorporated into contracts with its title insurance agents.

SECTION 17. PREMIUM FOR PURPOSES OF DETERMINING THE PROPER PREMIUM TAX DUE FROM TITLE INSURERS

- A. Section 23-67-203 prohibits the Commissioner from requiring that rates or premiums related to the sale of title insurance be filed by either a title insurer or title insurance agent or otherwise being subject to review, except for the requirement under Ark. Code Ann. § 23-103-405(c), regarding informational filings respecting the fees charged for closing protection letters. Title insurance premium, as defined by Ark. Code Ann. § 23-103-402(14), only applies when determining the appropriate amount of premium tax due and not to the premiums, charges or fees charged by title insurance agents to the consumer.
- B. For the sole purpose of determining the correct amount of premium tax due the State of Arkansas from an insurance company licensed to write title insurance, "Title insurance premium" means the funds paid to the title insurer as consideration for the amount of liability that is assumed by the title insurer under the title insurance policy.
- C. Title insurance premium does not include the underwriting and operating expenses of the title insurance agent that may be charged to the consumer in excess of this risk retained by the insurer regardless of how denominated by the title insurance agent. Examples of charges that are not title insurance premiums are:
 - (1) Title search, abstracting, or examination of title;
 - (2) Obtaining a title opinion;
 - (3) Document preparation fees;
 - (4) Escrow or closing fees;

- (5) Notary fees;
- (6) Fees incurred to cure defects in title;
- (7) Tax report or tax certification fees;
- (8) Title report fees;
- (9) Processing fees;
- (10) Courier fees; and
- (11) Fees incident to the issuance of a title insurance report or policy;

SECTION 18. SEVERABILITY

Any section or provision of this Rule held by a court to be invalid or unconstitutional shall not affect the validity of any other section or provision of this Rule.

SECTION 19. EFFECTIVE DATE

The provisions of this Rule shall be effective on January 1, 2008.

(signed by Julie Benafield Bowman)

JULIE BENAFIELD BOWMAN
INSURANCE COMMISSIONER
STATE OF ARKANSAS

December 31, 2007

DATE