

TITLE 41
INSURANCE

CHAPTER 27
TITLE INSURANCE

41-2701. SCOPE OF CHAPTER. This chapter applies only as to title insurance, as defined in section [41-508](#).

[41-2701, added 1961, ch. 330, sec. 566, p. 645.]

41-2702. COUNTERSIGNATURE OF POLICIES. A title insurer shall not issue a policy of title insurance or guaranteed certificate of title or other guaranty of title covering any property located within Idaho unless countersigned by a person, partnership, corporation or agency owning and maintaining a complete set of tract indexes or abstract records of the county in which such property is located; excepting, that any title insurer may issue such policies, guaranties or certificates directly and without such countersignature covering property in any county where it owns and maintains such indexes and records, or where no such indexes and records are owned and maintained.

[41-2702, added 1961, ch. 330, sec. 567, p. 645.]

41-2703. OTHER PROVISIONS ESPECIALLY APPLICABLE. The following other provisions of this code are, among other provisions, especially applicable as to title insurers:

- (1) Insuring powers, sections [41-312](#)(3) and [41-508](#).
- (2) Capital funds required, section [41-313](#).
- (3) Deposit of title insurer, sections [41-316](#) and [41-316A](#).
- (4) Premium tax, section [41-402](#).
- (5) Definition of "title insurance", section [41-508](#).
- (6) Reserve for losses, unearned premiums, section [41-611](#).
- (7) Special investments by title insurer, section [41-726](#).
- (8) Levy upon deposit of the insurer, section [41-810](#).

[41-2703, added 1961, ch. 330, sec. 568, p. 645; am. 1994, ch. 240, sec. 11, p. 758.]

41-2704. APPLICATION OF ACT -- BUSINESS OF TITLE INSURANCE. The provisions of [chapter 27, title 41](#), Idaho Code, shall apply to all title insurance companies, title insurance rating organizations, title insurance agents, applicants for title insurance, policyholders and to all persons and business entities engaged in the business of title insurance. The business of title insurance shall include:

(1) The making, or proposing to make, as an insurer, guarantor or surety, or proposing any contract or policy of title insurance, which shall include all certificates, policies, binders, preliminary reports or other underwriting contracts and indorsements;

(2) Transacting or proposing to transact any phase of title insurance including solicitations, negotiations preliminary to and execution of a contract of title insurance, and matters subsequent to the issuance of such contract;

(3) The performance of any act included herein by a title insurer or a title insurance agent including, but not limited to, handling of escrows, settlements or closing incident to any contract or policy of title insurance;

(4) The issuance of closing or settlement protection by a title insurer pursuant to section [41-2714](#), Idaho Code; or

(5) The doing, or proposing to do, any business in substance equivalent to any of the foregoing in the manner designated to evade the provisions of this chapter.

[41-2704, added 1973, ch. 135, sec. 1, p. 252; am. 2015, ch. 275, sec. 1, p. 1132.]

41-2705. SUPERVISION -- POLICY FORMS -- PREMIUMS. (1) The business of title insurance shall operate in Idaho under the control and supervision of the director of the department of insurance as to the premium rates for basic classifications of policy and underwriting contracts in relation thereto, escrow fee, rates, closing or settlement protection, tract indexes and abstract records, and insurability as provided in [title 41](#), Idaho Code, and under such uniform rules and regulations as may be from time to time prescribed by the director of the department of insurance. No title insurer shall engage in the title insurance business with respect to any interest in Idaho property other than under the applicable laws of the state of Idaho and under such rules and regulations as may be issued by the director of the department of insurance. No policy of title insurance or guarantee of any character on Idaho property shall be issued unless written by a title insurer complying with all the provisions of the laws of the state of Idaho, holding a certificate of authority under [chapter 3, title 41](#), Idaho Code, and under such rules and regulations as may be issued by the director of the department of insurance.

(2) The rates for the premiums for title insurance and closing or settlement protection, the proportion of the rates for the premiums for title insurance and closing or settlement protection which is retained by a title insurance agent and the portion which is retained by a title insurer, shall be determined within the provisions of sections [41-2706](#), [41-2707](#) and [41-2708](#), Idaho Code, and the general provisions of [title 41](#), Idaho Code; provided, not later than the effective date hereof each title insurer shall file its premium rates and basic policy classification in relation thereto, and the said rate so filed shall continue until changed as herein provided.

(3) The escrow fees of title insurers and title insurance agents shall be filed in accordance with rules promulgated by the director of the department of insurance.

(4) A title insurer shall file each form of certificate, policy, preliminary report, binder, closing or settlement protection, guaranty or other underwriting contract of title insurance prior to the delivery or issuance thereof in Idaho. The filing of the form of policies and contracts of title insurance and the approval of the same shall be in accordance with sections [41-1812](#) and [41-1813](#), Idaho Code, as well as in conformance with [chapter 27, title 41](#), Idaho Code.

(5) The provisions of sections [41-2705](#) through [41-2708](#), Idaho Code, shall not apply to a title insurer contracting as a reinsurer of a title insurance policy on Idaho property where no primary liability is assumed.

(6) The director of the department of insurance, for the purpose of carrying out this chapter shall have the right to require title insurers issuing

policies in Idaho and title insurance agents to submit such information as needed as to expense of operations, loss experience, underwriting risks and other material matters.

(7) Any person aggrieved by any order, act or regulation of the director hereunder shall have the rights and remedies set forth in [chapter 52, title 67](#), Idaho Code.

[41-2705, added 1973, ch. 135, sec. 2, p. 252; am. 2011, ch. 195, sec. 1, p. 556; am. 2015, ch. 275, sec. 2, p. 1132.]

41-2706. TITLE INSURANCE RATES -- JUSTIFICATION. Title insurance premium rates for the basic classification of policies and underwriting contracts shall be those filed by a title insurer or a title insurance rating organization with justification and approved by order of the director of the department of insurance, or, those filed by the director of the department of insurance with his justification therefor, hearing thereon and order of the director, both as more particularly hereinafter set forth. The division of the total premium between a title insurer and a title insurance agent shall be filed by the title insurer. The insurance premium rates on basic classification of policies and said division of total premium shall be deemed fixed by the director of the department of insurance upon the director's order approving the same (i) as filed and justified by a title insurer or title insurance rating organization, with or without hearing, or (ii) following a hearing on the same as filed and justified by the director of the department of insurance.

(1) Justification of title insurance rates proposed by a title insurer, a title insurance rating organization, or the director of the department of insurance shall be filed with any proposed change of rate, and the filing shall be justified by:

- (a) the experience or judgment of the title insurer or title insurance rating organization or the director proposing the rates; or
- (b) its interpretation of any statistical data relied upon; or
- (c) the experience of other title insurers or title insurance rating organizations; or
- (d) any other factors which the title insurer or rating organization or director deems relevant.

(2) Rates made hereunder shall not be excessive, nor inadequate for the safety and soundness of the title insurer and title insurance agent, and shall not be unfairly discriminatory, and shall be adopted giving due consideration to:

- (a) desirability of stability of rate structures;
- (b) necessity of assuring the financial solvency of a title insurer and title insurance agent in periods of economic depression by encouraging growth in assets of title insurers and title insurance agents in periods of high business and activity; and
- (c) necessity for assuring a reasonable margin of underwriting profit sufficient to induce capital to be invested therein.

(3) Every title insurer and every title insurance rating organization shall adopt basic classifications of policies and contracts of title insurance which shall be used as the basis for rates. Rates for each classification may, at the discretion of the title insurer, or the title insurance rating organization filing the rate, be less than the cost of the expense elements in the case of smaller insurances, and the excess may be charged

against larger insurances without rendering the rate unfairly discriminatory.

(4) When the director finds upon application by a title insurer that any rate for a particular kind or class of risk cannot practicably be filed before it is used, or any contract or kind of title insurance, by reason of rarity or peculiar circumstances, does not lend itself to advance determination and filing of rates, he may, under such rules and regulations as he may prescribe, permit such rate or contract or kind of title insurance to be used without a previous notice and thirty (30) day waiting period.

[I.C., sec. 41-2706, as added by 1973, ch. 135, sec. 3, p. 252; am. 2011, ch. 195, sec. 2, p. 557.]

41-2707. FILING OF TITLE INSURANCE RATES -- HEARINGS. (1) Pursuant to such regulations as the director of the department of insurance may adopt, every title insurer or rating organization shall file with the director of the department of insurance its schedule of rates, basic classifications of policies or contracts, and rules pertaining thereto, and every modification of any of the foregoing, and the director of the department of insurance may file for modifications of any of such rates, basic classifications, and rules previously filed and approved or under consideration for approval. Every filing by a title insurer, rating organization of the director of the department of insurance shall propose an effective date and shall not be effective until:

(a) notice of such filing shall forthwith be given to title insurers qualified to do business in the state of Idaho and the filing shall be available for public inspection for thirty (30) days after its date of filing;

(b) any interested party may file comments on and objections to the proposed filing or any part set forth therein during said period of public inspection;

(c) in the event of a filing by a title insurer or rating organization, whether or not comment or objection thereon has been received, which, in the judgment of the director, meets the requirements of section [41-2706](#), Idaho Code, the same may be approved without public hearing; and

(d) on any filing by an insurer or rating organization which upon review the director believes he may disapprove, or on a filing made by the director, the director shall hold a public hearing on or before sixty (60) days from the date of the original filing upon not less than ten (10) days' written notice of the hearing specifying in reasonable detail the matters to be considered at such hearing, notice to be given to every title insurer and title insurance rating organization, and to such other persons who have filed objection or comment thereto.

Upon such hearing, and not later than thirty (30) days thereafter, the director of the department of insurance shall order all or any part of such filing which he deems approved to be in effect as of the date of such order, and if he finds the filing or a part thereof does not meet the requirements of [title 41](#), Idaho Code, he shall issue an order specifying in what respects he finds that it so fails, stating when, within a reasonable period thereafter, such filing or a part thereof shall no longer be deemed effective if such filing or a part thereof has been effective prior thereto. Such order shall not affect any contract or policy made or issued prior to the effective date of said order changing any rate, or policy classification or form.

A title insurer, a title insurance rating organization or the director shall have the right at any time prior to an order thereon to withdraw a fil-

ing or a part thereof. Notice of such withdrawal shall be sent to each title insurer in the state that received notice of the original filing and to any person commenting on the filing.

(2) Any person or organization, other than a title insurer or title insurance rating organization, aggrieved by any filing in effect or proposed may make written application to the director specifying in reasonable detail the grounds of the objection relied upon by the applicant. The director, upon finding such application is made in good faith, there is reasonable cause for the grounds alleged by the applicant, that the applicant would be so aggrieved if his grounds are established, and that such grounds otherwise justify holding a hearing, shall, within ninety (90) days after receipt of such application, hold a hearing upon not less than thirty (30) days' written notice to the applicant and to every title insurer, title insurance rating organization, and agent involved in the filing challenged. If, after such hearing, the director finds that the filing or a part thereof does not meet the requirements of [title 41](#), Idaho Code, he shall issue an order specifying in what respect he finds that such filing or part thereof fails to meet the requirements, and stating when, within a reasonable period thereafter, such filing or a part thereof shall be deemed no longer effective. Copies of the order shall be sent to the applicant and to every such title insurer and title insurance rating organization and agent. Such order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.

(3) No filing nor any modification thereof shall be disapproved if the rate in connection therewith meets the requirements of this chapter.

[I.C., sec. 41-2707, as added by 1973, ch. 135, sec. 4, p. 252; am. 1977, ch. 142, sec. 9, p. 310.]

41-2708. DETERMINATION OF INSURABILITY -- PROHIBITED RISKS -- REBATES. (1) Insurability. No title insurance on real property in the state of Idaho shall be issued unless and until the title insurer or its agent:

- (a) Owns or leases, separately or jointly with another, tract indexes and abstract records of the county in which the property is located; and
- (b) Has caused to be made a search and examination of the title and a determination of insurability of title in accordance with sound title underwriting practices.

Evidence thereof for each policy shall be preserved and retained in the files of the title insurer or its agent. In lieu of retaining the original copy, the same may be reproduced by any photographic, photostatic, microfilm or microcard type of system or process that actually reproduces or forms a durable medium for reproducing the original.

(2) Prohibited risks. No title insurer doing business in this state shall guarantee the payment of deeds of trust or mortgages on real property. Nor shall any title insurer intentionally issue a title insurance policy without showing any outstanding enforceable recorded liens and encumbrances which are of record against the real property, except under circumstances the director of the department of insurance under his rulemaking powers may approve. Such guaranty of mortgage payments or intentional omission of such outstanding liens and encumbrances in violation hereof shall, upon proof thereof to the satisfaction of the director of the department of insurance, subject the insurer to a fine not to exceed two thousand dollars (\$2,000) and to the revocation of, suspension of, or refusal to renew a certificate of authority.

(3) Rebates. Section [41-1314](#)(1), Idaho Code, shall be applicable to any person or entity and all employees, officers, agents, attorneys and solicitors thereof engaging in the title insurance business as to rebates and illegal inducements as in said section defined. The words "as inducement to such insurance" and "or in connection therewith" shall be construed to include but not be limited to underwriting premium, agent's commission, abstracting charges, title examination fees, closing charges, escrow fees, trustee fees, and foreclosure fees relating to deeds of trust. No insured in a policy nor any other person directly or indirectly connected with the transaction involving the issuance of a title insurance policy, including but not limited to mortgage brokers, real estate brokers and agents, builders or attorneys, nor any employee, agent or representative or solicitor thereof, shall knowingly receive or accept, directly or indirectly, any such rebate or illegal inducement. No title insurance company or title insurance agent shall quote or make any charge for title insurance to any person less than the currently filed rate for such risk with the department of insurance. Nothing in this section or this title shall be deemed to prohibit a title insurer or title insurance agent from providing a reimbursement or discount of the premium otherwise payable for a title insurance policy and for any escrow fees otherwise charged in a transaction handled by such title insurance company or title insurance agent involving a bona fide employee's residence. Each such person and entity giving or receiving a rebate, illegal inducement or a reduction in rate in violation of this section shall, in addition to the other penalties set forth in [title 41](#), Idaho Code, for violation thereof, be liable for three (3) times the amount of such rebate, illegal inducement or reduced rate.

(4) Forwarding fees. No person forwarding or directing title insurance business to a title insurer or title insurance agent in Idaho, nor such insurer or agent receiving such business, shall give or receive anything of value, or a portion of the premium, therefor.

[41-2708, added 1973, ch. 135, sec. 5, p. 252; am. 2018, ch. 213, sec. 2, p. 482.]

41-2709. PERSONAL OR CONTROLLED INSURANCE. (1) Personal or controlled insurance means a policy of title insurance where the insured or one (1) of the insureds under such policy is, or the loss thereunder is payable to:

(a) the title insurer issuing such policy or to any person or entity directly or indirectly owning or controlling a majority of the voting stock or ownership in such title insurer, or any entity which is directly or indirectly controlled by a person or entity which also controls the title insurer described in this subsection (a); or

(b) a title insurance agent issuing such policy, or if the agent is a natural person, to his spouse, employer or employer's spouse or such other person related to said persons mentioned within the first degree by blood or marriage, or if the employer is an entity, to any person directly or indirectly owning or controlling the majority of voting stock or ownership of such entity, or any partner or member of an association, and if the agent is an entity, to any person directly or indirectly owning or controlling the majority of the voting stock or ownership of such entity or any corporation which directly or indirectly controls such person who also controls the title insurance agent.

(2) If the rates and charges for personal or controlled insurance in any one (1) year received from any one (1) source by a title insurer or by a title

insurance agency exceed twenty-five per cent (25%), or if from all sources of personal and controlled insurance exceed fifty per cent (50%), of the total rates and charges received by such title insurer or title insurance agent in the same year, the excess shall be deemed unlawful rebates. For the purpose of this provision, if the interest of the title insurer or title insurance agent is or was held by the same in a fiduciary capacity for the beneficial owner thereof reflected by a writing between the parties, the issuance of such title insurance policy by which title is conveyed to or by such title insurer or title insurance agent shall not be deemed controlled insurance.

(3) The provisions of sections [41-1310](#), [41-1311](#) and [41-1312](#), Idaho Code, with respect to controlled insurance business shall be deemed to include title insurance as well as the specific types of insurance named therein.

[I.C., sec. 41-2709, as added by 1973, ch. 135, sec. 6, p. 252.]

41-2710. REQUIREMENTS FOR AGENTS. (1) A title insurance agent is a person owning or leasing separately or with another licensed agent a complete set of tract indexes and abstract records of each county for which policies are written and authorized in writing by a title insurer to solicit insurance, issue or countersign policies, or otherwise engage in the title insurance business. A title insurer shall not allow or permit any person, firm, association or corporation to act as its agent in relation to the issuance of any certificate, title insurance policy, or other underwriting contract unless such person, firm, association or corporation shall first have obtained a title insurance agent's license for each county for which policies are to be written from the director of the department of insurance. No person, firm, association or corporation shall act within this state as such agent for any title insurer without first having obtained a license from the director of insurance and filed a bond or cash deposit in lieu thereof as required herein.

(2) A separate agent's license for each county shall be issued by the director of the department of insurance upon due showing filed by the applicant upon forms to be provided by the director of the department of insurance and payment of a fee of fifty dollars (\$50.00), upon oath, that such applicant if an individual, is a bona fide resident of Idaho, if a firm or association is composed wholly of Idaho residents, or if a corporation is duly authorized or qualified to do business in the state, that the individual agent (or if a corporation or association, its managerial personnel who are going to exercise the license privilege) has reasonable experience or instruction in the field of title examinations and title insurance and the insurance laws of Idaho, that the applicant owns or leases, separately or with another, and maintains an adequate, complete set of tract indexes and abstract records of each county wherein he proposed to do business, and such application shall be endorsed by the title insurer with whom he proposed to do business that the proposed agent is known to have a good reputation and is worthy of public trust and that such title insurer knows of no fact or condition that would disqualify the agent from receiving the permit. An agent's license shall continue from the date issued until the first day of January of each year and shall be automatically renewed thereon upon the payment of the annual fee of fifty dollars (\$50.00) by the agent, unless terminated as herein provided by the director of the department of insurance for cause. If the filing fee is not promptly paid, the applicant shall be subject to a late filing fee of two dollars (\$2.00) a day up to a maximum of one hundred dollars (\$100).

(3) Upon the termination of any agency by a title insurer or by the agent terminating, the title insurer shall immediately notify the director of the department of insurance in writing and a title insurance agent shall forthwith notify the director of the department of insurance of the name of a new title insurer with whom he proposes to do business, with the new title insurer's endorsement upon said notification. No title insurer shall allow the license of an agent for which it has vouched to continue unless all of the foregoing conditions have been complied with.

(4) The license of any title insurance agent may be denied, or the license suspended, revoked or renewal thereof refused, by the director of the department of insurance after notice and hearing if he finds that such license holder has:

(a) Willfully violated any provisions of [title 41](#), Idaho Code, or the rules issued thereunder;

(b) Has intentionally made a material misstatement in the application for such license;

(c) Has obtained or attempted to obtain such license by fraud or misrepresentation;

(d) Has misappropriated or converted to his own use or illegally withheld money belonging to a title insurance company, an insured or any other person;

(e) Has demonstrated his lack of trustworthiness or competence to act as such agent or been guilty of fraudulent or dishonest practices;

(f) Has materially misrepresented the terms and conditions of a title insurance policy or contract, or the condition of the title represented thereby; or

(g) Has failed to maintain a separate and distinct accounting of escrowed funds and has failed to maintain an escrow bank account or account separate and apart from all other accounts.

(5) Before any license is denied, suspended or revoked or renewal refused, the director shall give thirty (30) days' written notice by registered mail to the licensee or applicant and the title insurer represented by the agent, and if said agent or title insurer desires, to set a date of hearing and to allow the production of evidence by said parties or any other interested person as to the matter. The right and remedies of the parties shall be as set forth in [chapter 52, title 67](#), Idaho Code. Any decision of the director of the department of insurance shall be made in writing and filed in his office and mailed to the title insurer and agent involved.

(6) As a condition of obtaining said license, the individual to be licensed for himself or the entity to be licensed for each employee escrow officer shall obtain, file and pay for a surety bond as provided for an escrow officer.

(7) Regular examination of the tract indexes, abstract records, and any other records to ascertain compliance with [title 41](#), Idaho Code, and related rules, of a title agent after the first examination thereof by the director shall be limited to not more than every fifth year, unless the agent otherwise requests or the director has cause to believe the same does not comply with this chapter or the rules thereunder. The director shall prepare an examination report following each examination and shall provide such report to the title agent being examined affording the person up to twenty-eight (28) days within which to review, comment and request a hearing. Unless a hearing is requested in accordance with [chapter 2, title 41](#), Idaho Code, the examination report shall be deemed available to the public notwithstanding the

exemptions from disclosure provided in [chapter 1, title 74](#), Idaho Code. In addition, if the title agency affirmatively requests, any reply to the examination report shall be deemed available to the public notwithstanding the exemptions from disclosure provided in [chapter 1, title 74](#), Idaho Code. However, all working papers and other records produced by, obtained by or disclosed to the director or any other person in the course of an examination hereunder shall be made available to the person or company which was the subject of the examination in any proceeding pursuant to [chapter 2, title 41](#), Idaho Code, but shall otherwise be held by the director as an exempt record not required to be made public.

[41-2710, added 1973, ch. 135, sec. 7, p. 252; am. 2010, ch. 96, sec. 1, p. 182; am. 2015, ch. 141, sec. 111, p. 461.]

41-2711. REQUIREMENTS FOR TITLE INSURANCE RELATED BUSINESS -- BONDS. An escrow officer is an officer or an employee of a title insurance agent whose duties include any of the following: handling escrows, settlements, closings, and funds related thereto, except there are not to be included employees whose duties are wholly clerical or to act only as cosigners of escrow drafts. Each title insurance agent holding a license under this chapter, shall file with the director of insurance on or before January 1, of each year, and amend the same for new escrow officers employed within thirty (30) days of such employment, upon forms furnished by the director of insurance, the name and address of each person employed by it to serve in the capacity of an escrow officer. No title insurance agent shall permit any person to act as an escrow officer within this state beyond the time for compliance with the foregoing conditions. The director of insurance shall keep a record of the names and addresses of all escrow officers whose names have been duly filed with him as employed by title insurance agents within the state.

Every title insurance agent shall procure at its expense and file with the director of insurance a corporate surety bond of the type hereinafter set forth. The bond shall be in the minimum amount of ten thousand dollars (\$10,000) per county in which the title insurance agent is licensed and increased in increments of ten thousand dollars (\$10,000) corresponding to each additional person employed as an escrow officer in the county, provided that the maximum bond required of any title insurance agent shall be fifty thousand dollars (\$50,000) irrespective of the number of counties in which the agent is licensed or the number of escrow officers employed and provided that the manager or supervisor of the title insurance agent's principal office in a county shall not be counted as an escrow officer in determining the amount of the title insurance agent's bond. The bond shall run to the director of insurance and the condition of the bond shall be that the title insurance agent shall pay damages which may be sustained by the public in the conduct of title insurance related business as defined in section [41-2704\(3\)](#), Idaho Code, by reason of the title insurance agent's failure to comply with the provisions of this act and the regulations promulgated pursuant thereto by the director of insurance which shall include damages sustained by reason of fraud, dishonesty, forgery, theft or wilful misapplication of funds committed by the title insurance agent and its employees. Such bond(s) may be by blanket form coverage. In lieu of such bond, cash or securities approved by the director in like amount may be deposited through the director of insurance under custodial arrangement as provided for de-

posits by insurers under section [41-804](#), Idaho Code. The cash or securities so deposited shall be subject to the same condition as the bond.

If at any time it appears to the director that the terms of such bond may have been violated, the director may require the agent to appear in Boise with such records as he deems proper on the date not earlier than ten (10) days and not later than twenty-five (25) days after service of such notice, and there conduct an examination into the matter. If, upon examination the director is satisfied that the terms of the bond have been violated, he shall forthwith notify the surety and prepare a written statement covering the facts and deliver it to the attorney general of Idaho, with copy to the surety, whose duty it shall be to investigate the charges, and if satisfied that the terms of the bond have been violated, then to enforce the liability against the cash or securities, or by suit on said bond in Ada County in the name of the director of the department of insurance for the benefit of all parties who have suffered any loss because of the breach of the terms of said bond or deposit.

The provisions of this section as to escrow officers and the requirement for filing escrow fee rates with the director shall also be applicable to any corporation twenty-five per cent (25%) or more of the capital stock or ownership of which is directly or indirectly owned by a title insurer or title insurance agent, or any person or entity directly or indirectly owning a majority of the stock or ownership of such insurer or agent.

[I.C., sec. 41-2711, as added by 1973, ch. 135, sec. 8, p. 252; am. 1975, ch. 209, sec. 1, p. 580.]

41-2712. TITLE INSURANCE RATING ORGANIZATION. (1) Finding. There are at the present time more than twelve (12) title insurers to which this chapter applies. Reasonable competition exists among said insurers with respect to classes of insurance written on titles. Said title insurers are not members of or subscribers to any rating organization with respect to their operation in Idaho. Some of said insurers presumably would become members of or subscribers to a rating organization if the same existed in relation to title insurance in this state. It is reasonable to assume that competition will continue to exist among the title insurers if ratemaking in concert were authorized and rating organizations were licensed in this state for such insurance. So long as reasonable competition continues in title insurance, the public welfare is served both by the making of rates in concert and by the making of rates by individual insurers, and no review thereof by the state is necessary or desirable in the public interest with respect to such class of insurance. So long as such competition continues, regulation adequate to protect the welfare of the citizens of the state with respect to such ratemaking in concert and such rating organization may be secured by licensing and periodic examination of the rating organization.

(2) Declaration of Policy. It is the purpose of this section to regulate title insurance within the scope hereby by allowing a title insurer or title insurance agent by becoming a member of a licensed title insurance rating organization making a filing under this chapter to satisfy its obligations for such filings; to authorize ratemaking in concert and the operation of the rating organization subject to regulations provided in this chapter; to retain and preserve the benefits flowing from reasonable competition; and to provide a review of such rates by the state for such classes of insurance within the scope of this chapter, if any, in which such reasonable competition may not hereafter exist.

(3) Rating Organization. A rating organization as defined, established and regulated in sections [41-1415](#) and [41-1416](#), Idaho Code, may be established for the title insurance business. The same may be licensed and commence business as therein provided upon hearing and findings by the director of the department of insurance in accordance herewith. Filings may be made thereby by a rating organization consisting of six (6) or more title insurers receiving over fifty per cent (50%) of the title insurance premiums on business in the state pursuant to sections [41-2706](#) and [41-2707](#), Idaho Code.

(4) After hearing upon thirty (30) days to the rating organization and its members and upon a finding by the director that reasonable competition no longer exists with respect to any or all of the classes of title insurance, and upon ninety (90) days' expiration after notice thereof, and for so long thereafter as such finding with respect thereto continues in effect, such rating organization may not make filings herein authorized as to such class or classes of title insurance.

(5) A rating organization subject to rules and regulations approved by the director shall admit any title insurer applying thereto as a member or as a subscriber to its rating service at reasonable cost and without discrimination or to withdraw therefrom. The cooperation of title insurance rating organizations and the cooperation of the rating organization and title insurer, and the concert action by title insurers under this general management control of the rating organization in ratemaking and other matters within the scope of [title 41](#), Idaho Code, is hereby authorized, providing the premium rates for basic classification of policies, escrow fee rates, division of premium with agents and contracts are filed and approved in accordance with sections [41-2706](#) and [41-2707](#), Idaho Code.

(6) Deviations. Every member of or subscriber to a title insurance rating organization shall adhere to the filings made on its behalf by such organization, except that any title insurer member or subscriber may file with the director a decrease or increase to be applied to any and all elements of the rates produced by the rating system so filed for the class of title insurance upon a finding by the director that it is a proper rating unit for the application of such decrease or increase or proper to be applied to the rates for a particular area. Such deviation filing shall specify the basis for the modification and be accompanied by statistical or historical pattern justification. A copy of said filing shall be filed with the rating organization. Such deviation filing shall be subject to the provisions of sections [41-2706](#) and [41-2707](#), Idaho Code. Deviations shall be effective for one (1) year unless terminated sooner by order of the director.

(7) Appeals by the Minority. Any member of or subscriber to the rating organization may appeal to the director from any action or decision of the rating organization and the director shall, after hearing held upon not less than fifteen (15) days' written notice to the applicant and the rating organization, issue an order approving the rating organization's action or directing it to give further consideration thereto, all within thirty (30) days following such order. On the appeal from the decision or action of the rating organization the director may, in the event he finds such decision or action was unreasonable, issue an order directing said rating organization to make additions to its filings on behalf of its members or subscribers, including approval of the filing suggested by the appellant, if either be in accordance herewith. Failure of a rating organization to take action or make

a decision within sixty (60) days after submission of a proposal for deviation shall constitute a rejection thereof.

[I.C., sec. 41-2712, as added by 1973, ch. 135, sec. 9, p. 252.]

41-2713. ADMINISTRATION -- EXAMINATION COSTS. In the exercise of the powers of the director of the department of insurance to supervise and regulate title insurers, title insurance agents and title insurance rating organizations as provided in this chapter, as well as the powers of examination set forth in sections [41-219](#) and [41-220](#), Idaho Code, each title insurer, title insurance agent or rating organization regulated or examined shall, at the direction of the director, pay directly to such person charged with enforcing the law or regulations and making the examinations, actual travel expenses, a reasonable expense allowance, and compensation, at reasonable rates as approved by the director of the department of insurance, necessarily incurred in such matters on the presentation of a detailed account of such charges and expenses. A title insurer shall be charged for the original examination of a title insurance agent which the insurer desires to represent it, and a title insurer or rating organization shall be charged directly for hearings upon any hearing originated by filings made by it. The regulation and examination direct charges herein provided may include both field work and work in the office of the director necessary thereto.

Separately from the direct charges herein provided, the director may levy a general charge upon each title insurer in proportion to the gross premiums from title insurance written by it to defray the costs of regulation required by this chapter. Provided, nevertheless, a title insurer shall not be charged in any one (1) year, separately from the direct charges for examination under section [41-219](#), Idaho Code, said plant examination and said hearings, in excess of one per cent (1%) of the gross premiums as defined in section [41-402](#), Idaho Code, for title insurance written on Idaho real property in said year, provided the director in the first year after the effective date hereof may charge not in excess of two per cent (2%) of the gross premiums and may levy said charge after July 1, 1973, in advance based on the prior year's premiums. The director from year to year may carry forward any unexpended balance of general charges made in a rotating fund for said expenses to be incurred thereafter.

[I.C., sec. 41-2713, as added by 1973, ch. 135, sec. 10, p. 252.]

41-2714. CLOSING OR SETTLEMENT PROTECTION. (1) A title insurer may issue closing or settlement protection to a buyer, borrower or lender that is a party to a transaction in which a title insurance policy will be issued. The closing or settlement protection shall be on a form filed with the department in accordance with section [41-2705](#), Idaho Code.

(2) The closing or settlement protection shall be limited to indemnifying the buyer, borrower or lender insured against a loss due to either or both of the following actions of a licensed and authorized title insurance agent and is deemed for the purpose of this section to be within the business of title insurance as set forth in section [41-2704](#), Idaho Code:

(a) Theft or misappropriation of closing or settlement funds in connection with a transaction in which a title insurance policy or title insurance policies will be issued by or on behalf of the title insurer issuing the closing or settlement protection.

(b) Failure to comply with the written closing instructions when agreed to by the title agent or title insurer, but only to the extent that the failure to follow the instructions relates to the status of the title to that interest in land or the validity, enforceability and priority of the lien of the mortgage on that interest in land.

(3) A rate must be charged and the rate charged by a title insurer for each transaction that includes closing protection coverage shall not be subject to any agreement requiring a division of rates or premiums collected on behalf of the title insurer. The issuance of a closing or settlement protection to a buyer, borrower or lender that is a party to a transaction in which a title insurance policy will be issued shall be considered to be one (1) transaction for which a single rate is charged and shall not result in a separate charge to each party. The rate shall:

(a) Be filed with the department in accordance with sections [41-2706](#) and [41-2707](#), Idaho Code;

(b) Be the only rate charged for closing protection; and

(c) Not exceed twenty-five dollars (\$25.00).

(4) A title insurer may not provide any other protection that purports to indemnify against improper acts or omissions of a person with regard to closing or settlement services.

(5) Except as otherwise provided for in closing or settlement protection, a buyer, borrower, lender, or title insurer retains all their respective rights and remedies in connection with losses suffered due to theft or misappropriation of closing or settlement funds or the failure to comply with written closing instructions. Nothing in this section shall be construed to require a buyer, borrower or lender to obtain closing or settlement protection. A failure to obtain closing or settlement protection shall not be construed as an error, omission or other breach of duty of a buyer, borrower or lender.

[41-2714, added 2015, ch. 275, sec. 3, p. 1133.]