

Dear Senators PATRICK, Martin, Schmidt, and
Representatives BARBIERI, Clow, Smith:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of
the Department of Insurance:

IDAPA 18.01.56 - Rebates and Illegal Inducements to Obtaining Title Insurance Business Rules -
Proposed Rule (Docket No. 18-0156-1601).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative
Services. The final date to call a meeting on the enclosed rules is no later than 10/31/2016. If a meeting is
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis
from Legislative Services. The final date to hold a meeting on the enclosed rules is 11/30/2016.

The germane joint subcommittee may request a statement of economic impact with respect to a
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has
been held.

To notify Research and Legislation, call 334-4834, or send a written request to the address on the
memorandum attached below.



Eric Milstead
Director

Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Commerce & Human Resources Committee and the House Business Committee

FROM: Senior Legislative Research Analyst - Elizabeth Bowen

DATE: October 12, 2016

SUBJECT: Department of Insurance

IDAPA 18.01.56 - Rebates and Illegal Inducements to Obtaining Title Insurance Business Rules - Proposed Rule (Docket No. 18-0156-1601)

The Department of Insurance submits notice of proposed rulemaking at IDAPA 18.01.56. The proposed rule makes several changes to existing rules relating to title insurance, including:

- Adding a definition of social media, and clarifying the manner in which a title entity may use social media to promote its business;
- Clarifying that photographs of a property may be used in listing packages;
- Permitting a title entity to provide licensed attorneys and appraisers with the last deed of record;
- Revising requirements on advertising and self-promotion; and
- Removing a reference to code that is no longer applicable.

Negotiated rulemaking was conducted, and there is no anticipated negative fiscal impact on the state general fund. This rulemaking appears to be within the authority granted by Section 41-211, Idaho Code.

cc: Department of Insurance
Thomas A. Donovan

IDAPA 18 - IDAHO DEPARTMENT OF INSURANCE

18.01.56 - REBATES AND ILLEGAL INDUCEMENTS TO OBTAINING TITLE INSURANCE BUSINESS RULES

DOCKET NO. 18-0156-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 41-211, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This existing rule concerns rebates and illegal inducements in title insurance and provides limits on what items of value may be provided to producers of title business. Changes in technology have increased efficiencies of operations for title agents such that items of value can be produced much more quickly, easily, and therefore inexpensively. Additionally, some of the limitations in the rule have not been changed in many years. The proposed rulemaking makes the following changes:

- * Subsection 010.05 (Social Media) – define social media.
- * Subsection 012.02 (Listing Packages) – permit photos to be included in allowed materials if no additional charge is required; paper delivery would have commensurate charge.
- * Subsection 012.03 (Additional Information That May Be Provided) – permit last deed of record.
- * Subsection 013.01 (Advertisement) – eliminate the quarterly publication requirement; amend to permit advertising in annual trade association publications.
- * Subsection 014.01 (Self-Promotional Items) – increase amount spent on self-promotion items from \$10 to \$25/item and from \$50 to \$200/year in cumulative value.
- * Subsection 014.02 (Social Media) – implement new section that clarifies the use of social media.
- * Subsection 014.03 (Educational Programs) – increase the expenditure from \$10 to \$20 per person. Also change “solely regarding title and escrow.” The intent is to expand the programs which may be offered while maintaining the integrity of the topics as being “related” to title and escrow.
- * Section 017 (Escrow Closing Charges and Premium Rates) – remove the reference to Section 41-2706, Idaho Code, which is improper following a legislative change in 2011.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the August 3, 2016 Idaho Administrative Bulletin, [Volume 16-8, Page 111](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jim Scanlon, at jim.scanlon@doi.idaho.gov or (208)334-4321.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016.

DATED September 2, 2016

Dean L. Cameron
Director
Idaho Department of Insurance
700 W. State Street, 3rd Floor
P.O. Box 83720
Boise, ID 83702-0043
Phone: (208) 334-4250
Fax: (208) 334-4398

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 18-0156-1601
(Only Those Sections With Amendments Are Shown.)

010. DEFINITIONS.

01. Business of Title Insurance. “Business of title insurance” has the meaning set forth in Idaho Code, Section 41-2704 and includes in addition thereto, the performance in this state by a title entity of any service in conjunction with the issuance of any contract or policy of title insurance. (7-1-93)

02. Person. “Person” includes any natural person and any firm, association, organization, partnership, business trust, corporation or other legal entity. (7-1-93)

03. Producer of Title Business. “Producer of title business” includes any person engaged in this state in the trade, business, occupation or profession of: (7-1-93)

a. Buying or selling interest in real property; or (7-1-93)

b. Making loans secured by interest in real property; and (7-1-93)

c. Shall include but not be limited to real estate agents, real estate brokers, mortgage brokers, lending or financial institutions, builders, attorneys, developers, subdividers, auctioneers engaged in the sale of real property, consumers, and the employees, agents, representatives, or solicitors of any of the foregoing. (7-1-93)

04. Self Promotional. “Self promotional” refers to either a promotional function which is conducted by a single entity or a promotional item intended for distribution by a single entity. All benefits from the promotional function or item must accrue to the entity promoting itself. (7-1-93)

05. Social Media. “Social media” means electronic communication (such as websites for networking and blogging) that are used by persons to share information and to develop social and professional contacts. ()

056. Things of Value. “Things of value” means anything that has a monetary value and includes, but is not limited to, tangible objects, services, use of facilities, monetary advances, extension of lines of credit, creation of compensating balances, uncollected cancellation fees for issuance of title commitments, and all other forms of consideration. (7-1-93)

067. Trade Association. “Trade association” means an association of persons, a majority of whom are producers of title business, or persons whose primary activity involves real property. (7-1-93)

078. Title Entity. “Title entity” includes both title insurance agents and title insurers and their employees, agents, or representatives. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

012. PERMITTED CONSUMER INFORMATION.

01. **Information That May Be Provided.** To facilitate the listing and sale of Idaho property, certain consumer information may be provided without charge to licensed real estate agents and brokers or to a person who owns the property for which the request is made, but is limited to the following information: (3-15-02)

02. **Listing Package.** A single copy of a “listing package,” “property profile,” or similarly named packet of information. (7-1-93)

a. A “listing package” shall consist of information relating to the ownership and status of title to real property, and may include a single copy of only the following ~~six~~ seven (~~6~~7) items: ~~(3-15-02)~~()

i. The last deed appearing of record; (7-1-93)

ii. Deeds of trust or mortgages which appear to be in full force and effect; (7-1-93)

iii. A plat map reproduction and/or a locator map; (3-15-02)

iv. A copy of applicable restrictive covenants; (3-15-02)

v. Tax information; ~~and~~ ~~(3-15-02)~~()

vi. Property characteristics such as number of rooms, square footage and year built: ~~and~~ ~~(3-15-02)~~()

vii. Photographs, including aerial, of the property. ()

b. A “listing package” may include no more than the ~~six~~ seven (~~6~~7) above described items of information and shall not include market value information, demographics, or additions, addenda, or attachments which may be construed as conclusions reached by the title entity regarding matters of marketable ownership or encumbrances. Photographs may be provided, but only if the title entity does not pay a separate fee or provide any other consideration to a person for that product or service. The title entity may provide any photographs that are acquired through normal subscriptions or licensing fees associated with obtaining access to county records for tax information, property characteristics, or plat maps, as long as there is no additional charge to the title entity for the production, reproduction or delivery of the photographs. A generic cover letter with the printed standard letterhead of the title entity may be attached to the “listing package.” The cover letter may include a brief statement identifying by name only, which of the ~~six~~ seven (~~6~~7) permitted items of information are attached thereto. The cover letter may also contain a disclaimer as to conclusions of marketable ownership or encumbrances. The content of the cover letter or “listing package” is strictly limited to the foregoing and shall specifically not include any advertising or marketing for the benefit of the recipient. ~~(3-15-02)~~()

c. Market value information, demographics, ~~or~~ additions, addenda, photographs (other than as described in Paragraph 012.02.b) or other attachments, which attachments may be construed as conclusions reached by the title entity regarding matters of marketable ownership or encumbrances, may be provided, but only upon receipt of a charge commensurate with the actual cost of the work performed and the material furnished (See Exhibit 1, #11). ~~(3-15-02)~~()

03. **Additional Information That May Be Provided.** A title entity may provide to licensed attorneys and licensed appraisers only the following documents without charge; (4-4-13)

a. A plat map reproduction; (4-4-13)

- b. A copy of applicable restrictive covenants; (4-4-13)
- c. The last deed appearing of record; and ()
- ed. A cover letter as described in Paragraph 012.02.b. (4-4-13)

013. PERMITTED ADVERTISING WITH TRADE ASSOCIATIONS.

01. Advertisements. No advertisement may be placed in a publication that is published or distributed by, or on behalf of, a producer of title business. Advertising in a trade association publication is only permitted if the publication is an official publication, published or distributed by, or on behalf of the trade association with at least regular ~~quarterly~~ annual publications. The publications must be nonexclusive (any title entity must have an equal opportunity to advertise in the publication and at a standard rate). The title entity's ad must be purely self-promotional. (4-26-95)()

02. Donations. A title entity is permitted to donate time to serve on a trade association committee and may also serve as an officer or director for the trade association. A title entity may also donate, contribute or otherwise sponsor a trade association event if the event is a recognized association event that generally benefits all members and affiliated members in an equal manner. The donation cannot benefit selected producer of title business members of the association unless through random process. Solicitation for the donation must be made of all members and affiliated members in an equal manner. Donations are per agent license or insurer and are limited to a cumulative donation value of two thousand dollars (\$2,000) or equivalent things of value collectively to all trade associations per year. In addition, a title entity is allowed to participate in or attend trade association events as long as the title entity pays a fee commensurate with fees paid by other participants in the events. These events include, but are not limited to, conventions, award banquets, symposiums, breakfasts, lunches, dinners, open houses, sporting activities and all other similar activities. (3-30-07)

014. PERMITTED SELF-PROMOTIONAL ADVERTISING.

01. Self-Promotional Items. A title entity may distribute self-promotional items having an acquisition value of less than ~~ten~~ twenty five dollars (~~\$1025~~) to producers of title business, consumers, and members of the general public. These self-promotional items are limited to novelty gifts, advertising novelties, and generic business forms and specifically do not include food ~~or~~ beverages, or gift certificates, gift cards or other items that have a specific monetary value on their face or that may be exchanged for any other item having a specific monetary value. Self-promotional items shall not contain the name, logo or any reference to a producer of title business, trade association or donee. A recipient of a novelty gift or advertising novelty shall not receive gifts or advertising novelties title entity shall not distribute to any one recipient self-promotional items with in excess of ten dollars (\$10) of cumulative value per month and no more than fifty two hundred dollars (~~\$50200~~) of cumulative value of gifts or advertising novelties per year. A title entity shall also not give novelty gifts, advertising novelties or generic business forms to producers of title business, consumers, members of the general public, or trade associations for redistribution by these entities. (3-30-07)()

02. Social Media. A title entity may use free or paid social media services to promote its own business as long as such social media services are open and available to the general public. A title entity may write or post on social media services about an event that directly involves the title entity and a producer of title business or a trade association, and it may reference or link to the social media of a producer of title business or a trade association. A title entity may share, like, respond to, tag or comment on a producer of title business's or a trade association's social media page, post, or event as long as such action is free of charge. A title entity shall not pay a fee to share, like, respond to, tag or comment on any social media service that involves a producer of title business or a trade association or to increase the visibility, ranking, or distribution of any social media involving a producer of title business or a trade association. ()

023. Self-Promotional Functions. Self-promotional functions are limited to the following two (2) types of functions: (3-30-07)()

- a. Educational programs - a title entity is permitted to conduct educational programs. The education programs are limited to education solely regarding must only address title insurance and escrow and other topics

related thereto. A title entity is permitted to expend no more than ~~ten~~ twenty dollars (\$~~10~~20) per person at an educational program. For purposes of determining the maximum permitted expenditure, all costs associated with the delivery of the educational program shall be considered, including but not limited to, costs paid by the entity for travel, refreshments, instructor or speaking fees and facility rental. A title entity may participate in or make presentations at educational programs which are conducted or presented by other entities. The title entity is not permitted to expend any money to sponsor or cosponsor these programs, unless the educational program is a trade association event in which case Subsection 013.02 of this chapter will apply. ~~(3-30-07)~~ ()

b. Open houses - a title entity is permitted to have two (2) open houses per year. An open house shall be a self-promotional function at the title entity's owned or occupied facility (i.e. a Christmas party or any party, an open house for remodeling of its facility, an open house for a new building to become the title entity's facility). It shall be nonexclusive (an open invitation to all producers of title business is required). A title entity must not expend more than fifteen dollars (\$15) per guest per open house. A title entity cannot combine permitted expenditures for two (2) open houses to be used for one (1) open house. A title entity also cannot accumulate left over or unused expenditures from one (1) open house and use those expenditures for a second open house. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

017. ESCROW CLOSING CHARGES AND PREMIUM RATES.

A title entity shall not charge less than the rate as filed with the Department of Insurance for a specified title or escrow service or for a policy of title insurance. A specified title service is any service defined in the title entity's filed schedule of rates and charges or the schedule in use by the title entity. A title entity shall also not waive or offer to waive all or any part of the title entity's established fee or charge for services which are not the subject of rates filed with the Department of Insurance. A filed charge or rate shall not be less than the title entity's cost for providing that service. Rates shall not reflect credits of any kind applicable with regard to different classifications of customers or to types of closings. ~~Rates shall be filed with justification in accordance with Idaho Code, Section 41-2706. Justification shall clearly demonstrate that the title entity's filed rates for escrow services are not less than the title entity's cost to provide the escrow services.~~ Escrow rates shall be refiled on or before December 15, 1988 establishing a title entity's basic rate including a minimum and negotiable rate. However, a title entity shall utilize its basic rate, minimum rate, and negotiable rate with respect to different classifications of customers or to types of closings effective December 1, 1988. Escrow rates shall be filed thereafter on a yearly basis due March 15 reflecting experience based on the calendar year. The first yearly filing will be due March 15, 1990 reflecting experience from January 1, 1989 to December 31, 1989. In addition, rates shall be filed as often as necessary if escrow costs exceed escrow revenues. Rates may also be filed in addition to the yearly filing for filings to increase revenues. Rate filings in these instances shall be filed at least thirty (30) days prior to implementation. All rate filings shall be based on twelve months' experience. ~~(7-1-93)~~ ()