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The New Title Statutes and Rules – Frequently Asked Questions

3901-7-01 – Annual Review

Question 1: *When does the first review have to be completed?*

Answer: The annual review is required within 90 days of the end of the fiscal year for fiscal years that begin in 2007.

Question 2: *Is the escrow account of a title agent who is also an attorney exempt from the annual review requirements?*

Answer: An attorney's interest on lawyer's trust account (IOLTA) is exempt. If the title agent who is also an attorney conducts escrow closings related to the business of title insurance, he or she is required to maintain an interest on trust account (IOTA), which is not exempt from the review requirements.

3901-7-02 – Surety Bonds and Errors and Omissions Insurance

Question 1: *Who is required to obtain a surety bond?*

Answer: All title agents or title agencies that handle escrows for real property transactions not involving the issuance of any title insurance.

Question 2: *On what date is the surety bond required?*

Answer: Although the statute requiring coverage went into effect on January 1, 2007, the rule specifying the \$150,000 surety bond will not go into effect until February 12, 2007. Until the rule is effective, you may comply with the statutory requirement by obtaining either the surety bond or other coverage; however, the surety bond will be the only acceptable means of coverage on and after the effective date of the rule.



Question 3: *Should I send the bond or a copy of the bond to the Department of Insurance?*

Answer: You must only supply a copy of the surety bond to the Department when the Department requests you do so.

Question 4: *Is there an exception to the surety bond requirement for a title agent who is also an attorney if he or she handles escrows for real property transactions not involving the issuance of any title insurance through his or her law practice?*

Answer: No. The statute and rule regulate all title agent licensees. There is no statutory exemption for title agents who are also attorneys.

Question 5: *I have other insurance coverage that is similar to the surety bond coverage. Does that other coverage meet the requirements of section 3953.23(C) of the Revised Code?*

Answer: No. Rule 3901-7-02 requires a surety bond on a form approved by the Superintendent. The bond form is available on the Department's website. From the homepage, click on the quicklink labeled ODI Forms and then scroll to the bottom of the page to the forms for Property & Casualty or cut and the paste the following link into your browser window:
<http://www.ohioinsurance.gov/Forms/scripts/FormsDownload.asp?FormID=184>

Question 6: *I am handling the closing of a transaction involving both a first and a second mortgage. There is title insurance involved for the first mortgage but not the second. Do I need a surety bond in order to close the second?*

Answer: Yes. Any closing protection coverage issued in relation to the first mortgage does not extend to the second mortgage for which no title insurance was issued.

Question 7: *Is a surety bond required when the closing agent is different than the issuing agent?*

Answer: The term “issuing agent” indicates that there is title insurance, so no surety bond is required.

Question 8: *What kind of errors and omissions coverage does a notary need in order to do closings?*

Answer: All subcontractors of a title agent or title agency must either be covered under the agent or agency’s errors and omissions policy or must obtain their own errors and omissions coverage in the amount of \$50,000. A notarial services errors and omissions policy may not be sufficient because conducting a closing involves more than just notary services.

Closing Protection Coverage

Question 1: *May a direct operation of an underwriter, after making the offer of closing protection coverage as required by section 3953.32 of the Revised Code, attempt to dissuade the potential purchaser by stating or intimating that the coverage is not really necessary because the transaction is being handled by the underwriter?*

Answer: No. Ohio Revised Code section 3953.32 mandates that a title insurance agent or title insurance company offer closing or settlement protection to the lender, borrower, and seller at the time an order is placed with the company.

The offer is an offer of contract, the terms of which are specified by the closing protection coverage itself. The closing protection coverage creates contractual liability and is a filed form with filed rates.

If there is no closing protection or settlement coverage purchased, there is no coverage. Any potential recovery that might be available under some other legal theory is not equal to or a substitute for closing protection coverage

Assertions, representations, or statements that because a closing is conducted by a direct operation of an underwriter there is no need for closing protection coverage may be unfair and deceptive acts or practices prohibited by section 3901.19 of the Revised Code.