

Chapter 284-29A WAC

TITLE INSURANCE RATES

WAC

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WAC 284-29A-010 Finding and purpose. Title insurance protects against financial loss from defects in insured titles of real property. Losses from title insurance policies are not the primary cost to title insurers and title insurance agents. The primary costs incurred by title insurers and title insurance agents are maintenance of tract indexes and research to find title defects before the policies are issued. Title insurance is regulated differently than property and casualty insurance because loss ratios for title insurance are relatively low and expense ratios are fairly high. To implement and administer chapter 48.29 RCW, the commissioner needs detailed information about the costs underlying title insurance policies to regulate rates and ensure consumers are offered fair and equitable premiums. The purpose of this chapter is to adopt rules that establish:

- (1) Standards for determining whether a premium rate complies with RCW 48.29.143;
- (2) Standards and procedures that apply to RCW 48.29.-147;
- (3) The date after which title insurers must use rates that have been filed and approved under RCW 48.29.147; and
- (4) Requirements for submitting all rate filings through SERFF.

[Statutory Authority: RCW 48.02.060 and 48.29.005. 10-15-092 (Matter No. R 2009-01), § 284-29A-010, filed 7/20/10, effective 8/20/10.]

WAC 284-29A-020 Definitions. The definitions in this section apply to this chapter:

"Commitment" means the same as in RCW 48.29.010 (3)(c).

"Complete filing" means a package of information containing rates, supporting information, documents and exhibits submitted to the commissioner electronically using the system for electronic rate and form filing (SERFF).

"Date filed" means the date a complete filing has been received and accepted by the commissioner.

"Filer" means a person, organization or other entity that files title insurance rates with the commissioner for a title insurer.

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"NAIC" means the National Association of Insurance Commissioners.

"Objection letter" means correspondence created in SERFF and sent by the commissioner to the filer that:

(a) Requests clarification, documentation or other information;

(b) Explains errors or omissions in the filing; or

(c) Disapproves the filing under RCW 48.29.147.

"Policy" means a title policy as defined in RCW 48.29.010 (3)(a), and includes endorsements.

"Producer" means:

(a) A "producer of title insurance" as defined in WAC 284-29-205(8); and

(b) An "associate of producers" as defined in RCW 48.29.010 (3)(f).

"Rate" or "rates" means all classification manuals, rate and rule manuals, rating plans, rating schedules, minimum rates, class rates, and rating rules that title insurers must file under RCW 48.29.147.

"SERFF" means the system for electronic rate and form filing. SERFF is a proprietary NAIC computer-based application that allows insurers and other entities to create and submit rate, rule and form filings electronically to the commissioner.

"Title insurance agent" or "agent" has the same meaning as in RCW 48.17.010(15).

"Title insurance" has the same meaning as in RCW 48.11.100.

"Title insurer" means a title insurance company authorized to conduct title insurance business in this state under chapter 48.05 RCW.

[Statutory Authority: RCW 48.02.060 and 48.29.005. 10-15-092 (Matter No. R 2009-01), § 284-29A-020, filed 7/20/10, effective 8/20/10.]

WAC 284-29A-030 Transition to prior approval system. (1) On and after January 1, 2014, all rates used in Washington state must be filed and approved under RCW 48.29.147.

(2) Title insurers must submit the rate filings required under RCW 48.29.147 and subsection (1) of this section to the commissioner by September 1, 2013, for rates to be effective on January 1, 2014. This rule allows the commissioner time to take final action on rates filed under this chapter before the effective date of January 1, 2014.

(3) Rates filed under RCW 48.29.140(2) must not be used for commitments issued on or after January 1, 2014.

[Statutory Authority: RCW 48.02.060, 48.29.140, 48.29.143, and 48.29.147. 12-15-049 (Matter No. R 2012-10), § 284-29A-030, filed 7/16/12, effective 8/16/12. Statutory Authority: RCW 48.02.060 and 48.29.140. 11-16-031 (Matter No. R 2011-07), § 284-29A-030, filed 7/27/11, effective 8/27/11. Statutory Authority: RCW 48.02.060 and 48.29.005. 10-15-092 (Matter No. R 2009-01), § 284-29A-030, filed 7/20/10, effective 8/20/10.]

WAC 284-29A-040 Supporting information required under RCW 48.29.147. (1) When a title insurer files rates with the commissioner, the title insurer must demonstrate that the proposed rates comply with RCW 48.29.143. To the extent possible:

(a) Each title insurer must provide credible data to support the proposed rates. If credible data are not available, the title insurer must provide supporting documentation that describes its process for developing the proposed rates and demonstrates that they meet the requirements of RCW 48.29.143.

(b) Data used to support the proposed rates should be from the state of Washington. If data from other states are used, the title insurer must explain why those data are similar to what would be expected in Washington.

(2) If a title insurer proposes to use rates that are identical to the rates of another title insurer, the rate filing must include supporting information that demonstrates that the title insurer's proposed rates meet the requirements of RCW 48.29.143. It is not sufficient simply to state that the proposed rates are identical to those of another title insurer or that the rates are being filed for competitive purposes.

(3) Under RCW 48.29.143(2), a title insurer's provision for underwriting profit must be consistent with its cost of capital. The rate filing must demonstrate that expected underwriting profit, plus expected investment income on reserves and surplus, minus expected federal income taxes corresponds to an appropriate target after-tax rate of return on the title insurer's equity or net worth.

(4) The rate filing must provide sufficient information so that the commissioner may determine whether the proposed rates comply with RCW 48.29.147(3).

[Statutory Authority: RCW 48.02.060 and 48.29.005. 10-15-092 (Matter No. R 2009-01), § 284-29A-040, filed 7/20/10, effective 8/20/10.]

WAC 284-29A-050 Unfairly discriminatory rates. Situations in which the rates are unfairly discriminatory under RCW 48.29.143(1) include, but are not limited to:

(1) Rating rules that provide for a waiver of the cancellation fee or reduction of the cancellation fee, after a commitment has been issued, to an amount that is less than the expected average cost for the title insurer and its agents to issue a commitment in the defined geographical area covered by the rating rules;

(2) Negotiation or bidding of price;

(3) Rating rules that do not have a definite charge for every bracket of coverage;

(4) Discounts not provided to all qualifying risks; and

(5) Rating plans in which policies:

(a) Generating higher premiums subsidize smaller policies; or

(b) From one geographical area subsidize those from another geographical area.

(6) A title insurer's application of more than one rate schedule to similarly situated risks in a county or other defined geographical area. For example, it is unfairly discriminatory for a title insurer to use different rate schedules for business produced by different title insurance agents in a specific rating territory.

[Statutory Authority: RCW 48.02.060 and 48.29.005. 10-15-092 (Matter No. R 2009-01), § 284-29A-050, filed 7/20/10, effective 8/20/10.]

WAC 284-29A-060 Judgment rating. If the rates for a title insurance policy (including endorsements) depend in whole or in part upon the judgment of the title insurer or agent, the title insurer must:

(1) File rating rules that describe the specific criteria used for making the rates;

(2) Document the rationale for each judgment rate referencing the filed rating rule;

(3) Retain supporting documentation required under this section for at least three years following the effective date of the policy;

(4) Make the documentation available for examination by the commissioner on request; and

(5) Treat all similarly situated risks equitably. If a title insurer files a judgment rate that reduces the rate for a particular endorsement to a percentage of the base rate, then the title insurer must reduce the rate for all similarly situated risks that meet the same criteria. For example, if the title insurer charges an insured that meets specific criteria a premium of ten percent of the base rate for the endorsement, another insured meeting the same criteria must also be charged a premium of ten percent of the base rate.

[Statutory Authority: RCW 48.02.060 and 48.29.005. 10-15-092 (Matter No. R 2009-01), § 284-29A-060, filed 7/20/10, effective 8/20/10.]

WAC 284-29A-070 Referral fees and marketing expenses. (1) Under RCW 48.29.210 and WAC 284-29-200 through 284-29-265, title insurers and title insurance agents:

(a) Are prohibited from giving anything of value to any person for the referral of title insurance business;

(b) Are prohibited from giving most things of value to persons who are in a position to refer or influence the referral of title insurance business;

(c) Must charge and collect for the costs of providing certain listed information, services, and other items of value that title insurers and their agents give to persons who are in a position to refer or influence the referral of title insurance business; and

(d) Are permitted to give specified things of value to producers of title insurance at no charge.

(2) Therefore, in making rates a title insurer must not include income or expenses related to the costs of:

(a) Giving anything of value to any person for the referral of title insurance business;

(b) Providing information, services, and other items of value that a title company is prohibited from giving to a producer of title insurance business under RCW 48.29.210 and WAC 284-29-200 through 284-29-265; and

(c) Providing information, services, and other items of value that the title insurer or a title insurance agent may give to producers if the title insurer or title insurance agent is paid for the information, services, or other items identified in WAC 284-29-200 through 284-29-265.

(3) However, in making rates a title insurer may include its income or expenses related to the costs of giving permitted things of value to producers of title insurance business and the title insurer's and title insurance agents' other marketing expenses.

[Statutory Authority: RCW 48.02.060 and 48.29.005. 10-15-092 (Matter No. R 2009-01), § 284-29A-070, filed 7/20/10, effective 8/20/10.]

WAC 284-29A-080 Expense component of rates. (1)

In support of the expense component of the rates, the title insurer must:

- (a) Include estimates of expected expenses to issue title insurance policies and commitments;
- (b) Exclude the expected expenses related to escrow and other activities not directly related to title insurance;
- (c) Exclude the expected expenses described in WAC 284-29A-070(2); and
- (d) Show how those estimates were calculated and demonstrate how those estimates are connected to the proposed rates.

(2) The expense categories that must be considered when making rates include:

- (a) Employees' salaries and wages;
- (b) Owners' and partners' salaries and wages representing reasonable compensation for personal services actually performed by owners and partners;
- (c) Employee benefits;
- (d) Rent;
- (e) Insurance;
- (f) Legal expense;
- (g) Licenses, taxes, and fees;
- (h) Title plant expense and maintenance;
- (i) Office supplies;
- (j) Depreciation;
- (k) Automobile expense;
- (l) Communication expense;
- (m) Education expense;
- (n) Bad debts;
- (o) Interest expense;
- (p) Employee travel and lodging;
- (q) Loss and loss adjustment expense;
- (r) Accounting and auditing expense;
- (s) Public relations expense; and
- (t) Other specifically identified expenses.

(3) To support the agent commission component of rates, it is not sufficient to state the commission rate and perform calculations based on that percentage. The title insurer's rate filing must include data that supports the expense component that applies to its title insurance agents.

(4) The supporting information required under this section may aggregate the data from agent reports received by the title insurer in one or more years under the provisions of WAC 284-29A-110.

[Statutory Authority: RCW 48.02.060 and 48.29.005. 10-15-092 (Matter No. R 2009-01), § 284-29A-080, filed 7/20/10, effective 8/20/10.]

WAC 284-29A-090 Rates must include all costs. All premium rates filed under RCW 48.29.147 and this chapter must include all costs related to the title insurance transaction, including the costs to:

- (1) Maintain the tract indexes;
- (2) Search and examine the title or title to be insured;
- (3) Issue preliminary commitments;
- (4) Determine that each insured estate has been created, conveyed or modified as shown in the policy;
- (5) Evaluate coverage and amend the policy as needed with appropriate and reasonable exceptions, conditions or modifications; and

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(6) Any other direct or indirect cost associated with performing these activities.

[Statutory Authority: RCW 48.02.060 and 48.29.005. 10-15-092 (Matter No. R 2009-01), § 284-29A-090, filed 7/20/10, effective 8/20/10.]

WAC 284-29A-100 Effect of premium split on filing of premium rates.

If the title agency contracts between a title insurer and the title insurer's appointed title agents provide for a split of premiums between the title insurer and the title insurance agent, the title insurer must file premium rate schedules using supporting data and information that are consistent with that contractual premium split. The title insurer's base rates should be consistent with its actual contractual split of premiums between the title insurer and its agents. The title insurer's use of more than one premium split with its agents, if any, must be addressed through the filing of rating rules that specify the situations in which other premium splits are used and the adjustments that result from their use.

[Statutory Authority: RCW 48.02.060 and 48.29.005. 10-15-092 (Matter No. R 2009-01), § 284-29A-100, filed 7/20/10, effective 8/20/10.]

WAC 284-29A-110 Title insurance agents must report data to title insurers.

(1) Each title insurance agent must report premium, policy count, and expense data annually to each title insurer for which it produces business in the state of Washington by April 1st of each year, except as provided in subsection (4) of this section. These data must be reported following the instructions published by the commissioner on the commissioner's web site at www.insurance.wa.gov. These instructions, called the *Title Insurance Agent Annual Report*, are incorporated into this chapter by reference.

(2) Each annual report required by this section must include:

- (a) The following premium and policy count data:
 - (i) Title insurance premiums for all of the agent's business; and
 - (ii) Title insurance premiums produced for the title insurer to which the report is sent.
 - (iii) Number of policies issued by all of the title insurers with which the agent does business; and
 - (iv) Number of policies issued by the title insurer to which the report is sent.

(b) The following expense data related to issuing title insurance policies and commitments for all of the agent's business, excluding all expenses related to escrow and other activities not directly related to title insurance:

- (i) Employees' salaries and wages;
- (ii) Owners' and partners' salaries and wages representing reasonable compensation for personal services actually performed by owners and partners;
- (iii) Employee benefits;
- (iv) Rent;
- (v) Insurance;
- (vi) Legal expense;
- (vii) Licenses, taxes, and fees;
- (viii) Title plant expense and maintenance;
- (ix) Office supplies;
- (x) Depreciation;
- (xi) Automobile expense;
- (xii) Communication expense;

- (xiii) Education expense;
 - (xiv) Bad debts;
 - (xv) Interest expense;
 - (xvi) Employee travel and lodging;
 - (xvii) Loss and loss adjustment expense;
 - (xviii) Accounting and auditing expense;
 - (xix) Public relations expense; and
 - (xx) Other specifically identified expenses.
- (c) An explanation that:

(i) Describes how expenses are allocated between the title operations and escrow or other operations of the title insurance agent; and

(ii) Demonstrates that the expenses described in WAC 284-29A-070(2) have been excluded.

(d) The estimated average cost to issue a title insurance commitment.

(3) If a title insurer does not receive a report required under this section by April 1st of each year, the title insurer must notify the commissioner by April 15th. This notice must include the name of the agent that did not send the report on time.

(4) For the 2011 calendar year report, each title agent must submit the report to the title insurer(s) on or before April 1, 2013.

[Statutory Authority: RCW 48.02.060, 48.29.140, 48.29.143, and 48.29.147. 12-15-049 (Matter No. R 2012-10), § 284-29A-110, filed 7/16/12, effective 8/16/12. Statutory Authority: RCW 48.02.060 and 48.29.005. 10-15-092 (Matter No. R 2009-01), § 284-29A-110, filed 7/20/10, effective 8/20/10.]

WAC 284-29A-120 Filing documents incorporated by reference into this chapter. SERFF is a dynamic application that the NAIC will revise and enhance over time. To be consistent with NAIC filing standards and provide timely instructions to filers, the commissioner will incorporate documents posted on the SERFF web site and on the commissioner's web site into this chapter. By reference, the commissioner incorporates these documents into this chapter:

(1) The *SERFF Industry Manual* posted on the SERFF web site (www.serff.com); and

(2) The *Washington State SERFF Title Insurance Rate Filing General Instructions* posted on the commissioner's web site (www.insurance.wa.gov).

[Statutory Authority: RCW 48.02.060 and 48.29.005. 10-15-092 (Matter No. R 2009-01), § 284-29A-120, filed 7/20/10, effective 8/20/10.]

WAC 284-29A-130 General rate filing rules. Filers must submit complete rate filings that comply with the *SERFF Industry Manual* posted on the SERFF web site (www.serff.com) and the *Washington State SERFF Title Insurance Rate Filing General Instructions* posted on the commissioner's web site (www.insurance.wa.gov). All rate filings must comply with these rules:

(1) Filers must submit all rate filings and related documents to the commissioner electronically using SERFF.

(2) Filers must send all written correspondence related to a rate filing in SERFF.

(3) Each rate filing must be accurate and internally consistent.

(4) Filers must not submit combined rate and form filings.

[Statutory Authority: RCW 48.02.060 and 48.29.005. 10-15-092 (Matter No. R 2009-01), § 284-29A-130, filed 7/20/10, effective 8/20/10.]

WAC 284-29A-140 The commissioner may reject filings. (1) The commissioner may reject and close any filing that does not comply with WAC 284-29A-120. If the commissioner rejects a filing, the title insurer has not filed rates with the commissioner.

(2) If the commissioner rejects a filing and the filer resubmits it as a new filing, the date filed will be the date the commissioner receives and accepts the new filing.

[Statutory Authority: RCW 48.02.060 and 48.29.005. 10-15-092 (Matter No. R 2009-01), § 284-29A-140, filed 7/20/10, effective 8/20/10.]

WAC 284-29A-150 Responding to objection letters. If the commissioner disapproves a filing under RCW 48.29.147, the objection letter will state the reason(s) for disapproval, including relevant law and administrative rules. Filers must:

(1) Provide a complete response to an objection letter. A complete response includes:

(a) A separate response to each objection; and

(b) If appropriate, revised exhibits and supporting documentation.

(2) Respond to the commissioner in a timely manner.

[Statutory Authority: RCW 48.02.060 and 48.29.005. 10-15-092 (Matter No. R 2009-01), § 284-29A-150, filed 7/20/10, effective 8/20/10.]

WAC 284-29A-160 Filing authorization rules. A title insurer may authorize a third-party filer to file rates on its behalf. For the purposes of this section, "third-party filer" means a person or entity in the business of providing insurance regulatory compliance services.

(1) If a title insurer delegates filing authority to a third-party filer, each filing must include as supporting documentation a letter signed by an officer of the title insurer authorizing the third-party filer to make filings on behalf of the title insurer.

(2) The title insurer may not delegate responsibility for the content of a filing to a third-party filer. The commissioner considers errors and omissions made by the third-party filer to be errors and omissions of the title insurer.

(3) If a third-party filer has a pattern of making filings that do not comply with this chapter, the commissioner may reject a delegation of filing authority from the title insurer.

[Statutory Authority: RCW 48.02.060 and 48.29.005. 10-15-092 (Matter No. R 2009-01), § 284-29A-160, filed 7/20/10, effective 8/20/10.]