

Chapter 284-29 WAC
TITLE INSURANCE

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WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

284-29-110	No report required. [Statutory Authority: RCW 48.02.060, 48.29.005, and 48.29.015. WSR 09-20-070 (Matter No. R 2008-22), § 284-29-110, filed 10/5/09, effective 11/5/09.] Repealed by WSR 16-13-141 (Matter No. R 2016-04), filed 6/22/16, effective 7/23/16. Statutory Authority: RCW 48.02.060 and 48.29.005.
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WAC 284-29-100 Definitions. For purposes of this rule:

(1) An "affiliate" of, or person "affiliated" with a title insurance agent is a person who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(2) "Associates of producers" has the meaning as set forth in RCW 48.29.010 (3) (f).

(3) "Financial interest" has the meaning as set forth in RCW 48.29.010 (3) (d).

(4) "Person" has the meaning as set forth in RCW 48.01.070.

(5) "Producers of title insurance business or producer" has the meaning as set forth in RCW 48.29.010 (3) (e) and also includes associate of producers as set forth in RCW 48.29.010 (3) (f).

(6) "Report of affiliated business ownership" means a report required by RCW 48.29.015 setting forth the name, address, and percent of title orders originating from those persons who have had a financial interest in a title insurance agent.

(7) "Title insurance agent" has the meaning as set forth in RCW 48.17.010 (15).

(8) "Title order" has the same meaning as "preliminary report," "commitment," or "binder" as set forth in RCW 48.29.010 (3) (c) and also includes "title policy" as set forth in RCW 48.29.010 (3) (a).

[Statutory Authority: RCW 48.02.060, 48.29.005, and 48.29.015. WSR 09-20-070 (Matter No. R 2008-22), § 284-29-100, filed 10/5/09, effective 11/5/09.]

WAC 284-29-120 Report form. The title insurance agent report of affiliated business ownership form and instructions as to how and where to submit the form are on the commissioner's website at www.insurance.wa.gov.

[Statutory Authority: RCW 48.02.060, 48.29.005, and 48.29.015. WSR 09-20-070 (Matter No. R 2008-22), § 284-29-120, filed 10/5/09, effective 11/5/09.]

WAC 284-29-130 Report required. (1) The title insurance agent report of affiliated business ownership must be filed with the commissioner annually by March 15th.

(2) If there is any change or addition to the ownership information contained in the annual report, then the title insurance agent must file an amended report with the commissioner within fifteen days after the end of the month in which the title insurance agent learns of the change or addition.

(3) Changes to the information regarding the percent of title orders originating from each of the producers do not need to be filed with the commissioner except with the annual filing. If the title insurance agent discovers or reasonably should have discovered that the information contained in the annual filing was not correct, then the title insurance agent must file an amended report within fifteen days after the end of the month in which the title insurance agent discovered the incorrect information.

[Statutory Authority: RCW 48.02.060, 48.29.005, and 48.29.015. WSR 09-20-070 (Matter No. R 2008-22), § 284-29-130, filed 10/5/09, effective 11/5/09.]

WAC 284-29-140 Identifying producers. (1) If a person who has a financial interest in a title insurance agent also owns a controlling interest in another producer, then the title insurance agent must report this person and the other business entities controlled by the person as producers who have a financial interest in the title insurance agent. For example if John Brown personally has a financial interest in a title insurance agent and John Brown also owns a controlling interest in ABC Realty Co. and XYZ Home Builders Inc., then the title insurance agent, in addition to reporting John Brown as a producer, must also report ABC Realty Co. and XYZ Home Builders Inc. as producers having a financial interest in the title insurance agent.

(2) In reporting producers who have a financial interest in the title insurance agent, the information about the producer must be sufficient to properly identify the person who is directly in a position to refer or influence the referral of title insurance business to the title insurance agent.

(3) If a producer owns the financial interest in the title insurance agent through one or more intermediary entities, then the identity of the producer and the identity of other entities that the producer owns a controlling interest in that are producers must be set forth in the report. For example, if Henry Smith and Frank Jones own an interest in Joint Venture Co., and Joint Venture Co. has a financial interest in the title insurance agent, then Henry Smith and Frank Jones must be identified in the report as producers who have a financial interest in the title insurance agent, in addition to reporting other

entities who are producers that are owned by Henry Smith and Frank Jones.

[Statutory Authority: RCW 48.02.060, 48.29.005, and 48.29.015. WSR 09-20-070 (Matter No. R 2008-22), § 284-29-140, filed 10/5/09, effective 11/5/09.]

WAC 284-29-150 Reporting of amount of business. A title insurance agent must make all reasonable and good faith efforts to determine the source of the title orders that it receives. This must also include information that the title insurance agent obtains when it is also acting as an escrow agent for the transaction. For example:

(1) If a title insurance agent receives a title order in which the seller is XYZ Home Builders Inc., owned by John Brown who has a financial interest in the title insurance agent, then it may be assumed that the source of the title order was John Brown (XYZ Home Builders, Inc.) even though the title order may have been directly received from another person.

(2) If the title insurance agent receives a title order from a producer with a financial interest in the title insurance agent held through one or more intermediary entities, then the specific producer must be identified as the source of the title order. For example, Henry Smith and Frank Jones own an interest in Joint Venture Co., and Joint Venture Co. directly holds the financial interest in the title insurance agent. Henry Smith must be reported as the source of the title insurance business for title orders received from Henry Smith. Likewise, Frank Jones must be reported as the source of title insurance business of orders received from Frank Jones. The amount of business received from both Henry Smith and Frank Jones may not be aggregated and reported as being from Joint Venture Co.

(3) If a title insurance agent receives an order in its escrow department from ABC Realty Co. (owned by John Brown who also has a financial interest in the title insurance agent), and the escrow department then places the title order with the title department of the title insurance agent, then the title insurance agent must report the source of the title order as being ABC Realty Inc.

(4) If the title insurance agent handling the transaction, either through its title department or its escrow department, or both, has information that ABC Realty Inc. (owned by John Brown who has a financial interest in the title insurance agent) is one of the real estate companies involved in the transaction, then it must be assumed that ABC Realty Inc. was the source of the title order unless the title insurance agent has sufficient evidence that the title order was referred to the title insurance agent by another producer.

[Statutory Authority: RCW 48.02.060, 48.29.005, and 48.29.015. WSR 09-20-070 (Matter No. R 2008-22), § 284-29-150, filed 10/5/09, effective 11/5/09.]

WAC 284-29-160 Recordkeeping. (1) A title insurance agent must keep and maintain complete and accurate records of the names and business addresses of those persons who have had a financial interest in the title insurance agent who are reasonably known or reasonably believed by the title insurance agent to be producers.

(2) A title insurance agent must keep and maintain records of its title orders sufficient to identify the source of the title orders.

(3) The records required by WAC 284-29-100 through 284-29-160 must be kept by the title insurance agent for a period of three years after the end of the year being reported upon.

(4) All records of a title insurance agent kept pursuant to WAC 284-29-100 through 284-29-160 must be available to the commissioner or the commissioner's representative during regular business hours.

[Statutory Authority: RCW 48.02.060, 48.29.005, and 48.29.015. WSR 09-20-070 (Matter No. R 2008-22), § 284-29-160, filed 10/5/09, effective 11/5/09.]

WAC 284-29-200 Scope and purpose. (1) RCW 48.29.210(2) states: "A title insurer, title insurance agent, or employee, agent, or other representative of a title insurer or title insurance agent shall not, directly or indirectly, give anything of value to any person in a position to refer or influence the referral of title insurance business to either the title insurance company or title insurance agent, or both, except as permitted under rules adopted by the commissioner." WAC 284-29-200 through 284-29-265 establishes standards for acceptable giving of things of value by a title company to any person in a position to refer or influence the referral of title insurance business to the title company. If the thing of value is not clearly and specifically included in WAC 284-29-200 through 284-29-265 as a thing of value that a title company may give to a person, its giving is prohibited.

(2) RCW 48.29.210 not only applies to title insurance producers or associates of producers, but to every person in position, directly or indirectly, to refer or influence the referral of title insurance business.

(3) No title company is required to give to any person any of the things of value that are permitted by WAC 284-29-200 through 284-29-265 and a person is not entitled to receive any of the permitted things of value from a title company.

(4) Adoption of WAC 284-29-200 through 284-29-265 must not be construed to mean that the commissioner encourages title companies to give anything of value to any person in a position to refer or influence the referral of title insurance business.

(5) Nothing contained in WAC 284-29-200 through 284-29-265 prohibits the payment by a title insurer or title insurance agent to a producer of a return on ownership interest in the title insurer or title insurance agent as set forth in RCW 48.29.213.

(6) Title companies must not enter into any agreement, arrangement, scheme, or understanding or in any other manner pursue any course of conduct, designed to avoid RCW 48.29.210 and WAC 284-29-200 through 284-29-265.

[Statutory Authority: RCW 48.02.060, 48.29.005 and 48.29.210. WSR 09-05-077 (Matter No. R 2008-21), § 284-29-200, filed 2/17/09, effective 3/20/09.]

WAC 284-29-205 Definitions. For purposes of WAC 284-29-200 through 284-29-265:

(1) "Advertising" or "advertisement" means a representation about any product, service, equipment, facility, or activity or any person who makes, distributes, sells, rents, leases, or otherwise makes available such a product, service, equipment, facility, or activity, when the representation:

(a) Is communicated to a person that, to any extent, by content or context, informs the recipient about such product, service, equipment, facility, or activity;

(b) Recognizes, honors, or otherwise promotes such a product, service, equipment, facility, or activity; or

(c) Invites, advises, recommends, or otherwise solicits a person to participate in, inquire about, purchase, lease, rent, or use such a product, service, equipment, facility, or activity.

(2) "Associates of producers" has the same meaning as set forth in RCW 48.29.010 (3)(f).

(3) "Bona fide employee of a title company" means an individual who devotes substantially all of his or her time to performing services on behalf of a title company and whose compensation for these services is in the form of salary or its equivalent by the title company.

(4) "Commercial real estate" means a fee title interest or possessory estate in real property located in this state, except an interest in real property which is:

(a) Improved with one-single family residential unit or multifamily structure with four or less residential units;

(b) Unimproved and the maximum permitted development is one to four residential units or structures under the county or city zoning ordinances or comprehensive plan applicable to that real estate;

(c) Classified as farm and agricultural land or timber land for assessment purposes under chapter 84.34 RCW; or

(d) Improved with single-family residential units such as condominiums, townhouses, timeshares, or stand-alone houses in a subdivision that may be legally sold, leased, or otherwise disposed of on a unit-by-unit basis.

(5) "Give" means to transfer to another person, or cause another person to receive, retain, use or otherwise benefit from a thing of value whether or not the title company receives compensation in return. It also means the transfer to a third person of anything of value that in any manner benefits a person in a position to refer or influence the referral of title insurance business.

(6) "Market rate" means the price at which a seller, under no obligation or duress to sell, is willing to accept and a buyer, under no obligation or duress to buy, is willing to pay in an arms-length transaction. The market rate is determined by comparing the items or services purchased or sold to similar items or services that have been recently purchased by others or sold to others, including others not in the title insurance business.

(7) "Person" has the meaning set forth in RCW 48.01.070.

(8) "Producers of title insurance business" or "producer" has the meaning set forth in RCW 48.29.010 (3)(e); this term includes associates of producers and any person in a position to refer or influence the referral of title business to the title company.

(9) "Representative of a title company" means any person acting directly or indirectly on behalf of the title company.

(10) "Restrictive covenants" means private agreements that restrict the use or occupancy of real property generally by specifying lot sizes, building lines, occupancy, architectural styles, and the

use to which the property may be put. Restrictive covenants do not include matters such as easements and road maintenance agreements.

(11) "Self-promotional" means an advertisement or promotional function which is conducted by a single title company solely for the benefit of the title company or a promotional item intended for distribution by a single title company and only on behalf of the title company.

(12) "Thing of value" means anything that has a monetary value. It includes but is not limited to cash or its equivalent, tangible objects, services, use of facilities, monetary advances, extensions of lines of credit, creation of compensating balances, title company employee time, advertisements, discounts, salaries, commissions, services at special prices or rates, sales or rentals at special prices or rates, and any other form of consideration, reward or compensation.

(13) "Title company" means either a title insurance company authorized to conduct title insurance business in this state under chapter 48.05 RCW or a title insurance agent defined in RCW 48.17.010(15), or both. The term includes employees, representatives, and agents of title insurance companies and title insurance agents.

(14) "Trade association" means an association of persons, a majority of whom are producers or persons whose primary activity involves real property. Trade association does not include an association of persons, a majority of whom are title insurance companies and title insurance agents.

[Statutory Authority: RCW 48.02.060, 48.29.005 and 48.29.210. WSR 09-05-077 (Matter No. R 2008-21), § 284-29-205, filed 2/17/09, effective 3/20/09.]

WAC 284-29-210 Real property information. (1) A title company may give to a producer without charge information about a specific parcel of real property located in any county, commonly referred to as a "listing package," which consists of information relating to the ownership and status of title to real property. The listing package must be limited to a single copy of one or more of the following six items of information:

- (a) The last deed appearing of record;
- (b) Deeds of trust, mortgages, and real estate contracts which appear to be in full force and effect;
- (c) A map of the property which may show the property's location or dimensions, or both;
- (d) Applicable restrictive covenants;
- (e) Tax information; and
- (f) Property characteristics such as number of rooms, square footage and year built.

(2) A listing package must not include any other real property information such as market value information, demographics, or additions, addenda, or attachments which may be construed as conclusions reached by the title company regarding matters of marketable ownership or encumbrances.

(3) A generic cover letter printed on the standard letterhead of the title company may be attached to the listing package.

(a) The cover letter may include a brief statement identifying by name only, any of the six permitted items included in subsection (1) of this section that may be attached to the cover letter;

(b) The cover letter may contain a disclaimer as to conclusions of marketable ownership or encumbrances; and

(c) The content of the cover letter or listing package is strictly limited to the items listed in this section and must not include any advertising or marketing for the benefit of the recipient.

(4) A title company may give, without charge, to a producer a single copy of a document affecting title to a specific parcel of real property only if:

(a) The cost to the title company of giving the copy of the document, including but not limited to labor and materials, is ten dollars or less; and

(b) The document is not in any manner given to the producer in conjunction with or in association with the giving of other documents related to property in the general locale for which the single document is being given.

(5) A title company must not give a producer reports containing publicly recorded information, comparable sale information, appraisals, estimates, or income production potential, information kits or similar packages containing information about one or more parcels of real property, except as permitted by this section, without charging and actually receiving payment for the actual cost of the work performed and the material provided (for example, costs related to providing farm packages, labels, lot book reports, home books, and tax information).

(6) A title company may give, at no charge, to the proposed insured or insured, copies of any documents set forth as exceptions in a commitment or policy.

(7) If a title company owns or leases and maintains a complete set of tract indexes in a particular county in which the county government does not make copies of recorded documents available on the county's website, then the title company may make copies of the recorded documents available at no charge to the general public on the title company's website.

[Statutory Authority: RCW 48.02.060, 48.29.005 and 48.29.210. WSR 09-05-077 (Matter No. R 2008-21), § 284-29-210, filed 2/17/09, effective 3/20/09.]

WAC 284-29-215 Advertising. (1) A title company may advertise in a trade association publication only if all of the following conditions are met:

(a) The publication is an official publication of the trade association;

(b) The publication must be nonexclusive so that any title company has an equal opportunity to advertise in the publication;

(c) The title company must pay no more than the standard rate for the advertisement applicable to members of the trade association;

(d) The title company's advertisement must be solely self-promotional; and

(e) The payment for the advertisement must be included as an expenditure for the purposes of the limits in WAC 284-29-220(5).

(2) Except as provided in subsection (1) of this section, a title company must not directly, indirectly, by payment to a third-party or otherwise, use any means of communication or media to advertise on behalf of, for, or with a producer, including but not limited to:

(a) Advertising real property for sale or lease unless the property is owned by the title company;

(b) Advertising or promoting the listings of real property for sale by real estate licensees; or

(c) Advertising in connection with the promotion, sale, or encumbrance of real property.

(3) No advertisement may be placed in a publication that is published or distributed by or on behalf of a producer of title business, including but not limited to, web sites, flyers, postcards, for sale signs, flyer boxes, or any other means of communication or any other media.

(4) Title companies may pay for a self-promotional advertisement in the publications or broadcasts of the following persons:

(a) Newspapers;

(b) Telephone directories;

(c) Internet web sites, subject to the limits of subsection (3) of this section;

(d) Television stations;

(e) Radio stations; and

(f) Real estate licensees who do not represent buyers and sellers or who do not function as agents as defined in RCW 18.86.010(2) provided that the publication must be nonexclusive so that any title company has an equal opportunity to advertise in the publication.

[Statutory Authority: RCW 48.02.060, 48.29.005 and 48.29.210. WSR 09-05-077 (Matter No. R 2008-21), § 284-29-215, filed 2/17/09, effective 3/20/09.]

WAC 284-29-220 Trade associations. (1) A title company may donate the time of its employees to serve on a trade association committee.

(2) A title company may donate to, contribute to or otherwise sponsor a trade association event only if all of the following conditions are met:

(a) The event is a recognized association event that generally benefits all members and affiliated members of the association in an equal manner;

(b) The donation must not benefit a selected producer member of the association unless through a random process; and

(c) Solicitation for the donation must be made of all association members and affiliated members in an equal manner and amount.

(3) A title company may pay for its employees and a single guest of each employee to attend trade association events only if all of the following conditions are met:

(a) The title company pays a fee equal to fees paid by producer members of the association in the events;

(b) The title company employees and their guest(s) actually attend the event (except when attendance is prevented by an emergency); and

(c) The guest of the title company employee is not a producer (except where the guest is related to the title company employee by blood or marriage or their domestic partner).

(4) For purposes of this section, trade association events include, but are not limited to, conventions, award banquets, symposiums, educational seminars, breakfasts, lunches, dinners, receptions,

cocktail parties, open houses, sporting activities and other similar activities.

(5) A title company may:

(a) (i) Donate to, contribute to, or otherwise sponsor a trade association event under subsection (2) of this section;

(ii) Advertise in a trade association publication under WAC 284-29-215(1); and

(iii) Sponsor a trade association educational seminar under WAC 284-29-235(3);

(b) Give a thing of value listed under (a) of this subsection to a trade association only if all of the following requirements are met:

(i) The thing of value is limited to one thousand dollars per event, advertisement, or sponsorship of an educational seminar;

(ii) The title company must not give a thing of value to all trade associations more than three times in a calendar year;

(iii) The title company must not combine any of these permitted expenditures into one expenditure; and

(iv) The title company must not accumulate or carry forward left over or unused expenditures from one of these permitted expenditures to a subsequent expenditure.

(6) If a title company owns or leases and maintains a complete set of tract indexes in more than one county:

(a) The limits set forth in subsection (5) of this section apply on a county by county basis for donations, contributions, sponsorships, payments for events, advertisements, or sponsorship of educational seminars of trade associations a majority of whose members are located in that county;

(b) A donation, contribution, sponsorship, payment for an event, advertisement, or sponsorship of an educational seminar to a statewide trade association shall constitute one of its expenditures for each and every county in which the title company is authorized to issue title insurance policies; and

(c) The title company must not combine or accumulate unused expenditures of these permitted expenditures from one county to another county nor to a statewide trade association.

(7) If a title company that is under common ownership makes a donation, contribution, sponsorship, payment for an event, advertisement, or sponsorship of an educational seminar to a statewide trade association, the expenditure shall constitute an expenditure as one of the expenditures for each and every one of the title companies that are under common control.

[Statutory Authority: RCW 48.02.060, 48.29.005 and 48.29.210. WSR 09-05-077 (Matter No. R 2008-21), § 284-29-220, filed 2/17/09, effective 3/20/09.]

WAC 284-29-225 Self-promotional items. A title company may give a thing of value with its preprinted company logo, except money or gift cards, to a producer if the cost to the title company is five dollars or less per thing of value and only if the thing of value does not contain the name or logo of the producer or any reference to the producer.

[Statutory Authority: RCW 48.02.060, 48.29.005 and 48.29.210. WSR 09-05-077 (Matter No. R 2008-21), § 284-29-225, filed 2/17/09, effective 3/20/09.]

WAC 284-29-230 Permitted business entertainment. (1) A title company may make expenditures for business meals on behalf of any individual, only if the expenditure meets all the following criteria:

(a) An individual representing the title company is present during the business meal;

(b) There is a substantial and substantive title insurance business discussion directly before, during or after the business meal;

(c) No more than four individuals that are employed by or are independent contractors of the same producer are provided a business meal during a single event (spouses and guests of the producer must be included in the count for purposes of determining the four-person maximum); and

(d) The title company does not expend more than one hundred dollars per individual throughout any calendar year for all business meals.

(2) The business meals permitted in subsection (1) of this section must not include open houses of producers wherever located, including but not limited to, at the producers premises or facilities or homes of property for sale.

(3) For purposes of this section, "meals" includes, but is not limited to, breakfast, brunch, lunch, dinner, receptions, or cocktails and other beverages, whether the meals occur on or off the title company's premises.

(4) For purposes of determining the maximum permitted expenditure under subsection (1) of this section, all of the following requirements must be met:

(a) All costs associated with a meal must be included in the calculation of expenses. When calculating the cost of a meal, the title company must include all costs paid by the title company for travel, transportation, hotel, equipment or facility rental, food, cocktails and other beverages, refreshments, and registration or entry fees, except those fees incurred solely by the title company and that do not benefit the producer.

(b) Attendance at or an invitation to a meal must not be based on or be given as compensation for forwarding or directing title business to the title company.

(c) For accounting purposes, the expenditures by a title company for a meal may be prorated among all attendees, including the title company employees.

(5) A title company may host no more than two self-promotional functions per year, only if all of the following requirements are met:

(a) Any self-promotional function must be at the title company's owned or occupied facility at which the title company conducts its regular business. The self-promotional function must be nonexclusive and open to all producers.

(b) A title company must not spend more than fifteen dollars per guest reasonably expected to attend at any one self-promotional function.

(c) A title company must not combine permitted expenditures for two self-promotional functions into a single self-promotional function.

(d) A title company must not accumulate or carry forward left over or unused expenditures from one self-promotional function to a subsequent self-promotional function.

(e) If a title company owns or leases and maintains a complete set of tract indexes in more than one county, then the limits set forth in this subsection apply on a county by county basis.

(i) The self-promotional functions must be at the title company's owned or occupied facility at which the title company conducts its regular business in the county for which it owns or leases and maintains a complete set of tract indexes.

(ii) The title company must not combine permitted expenditures for a self-promotional function from one county to another county.

(6) The limits contained in subsections (1) and (5) of this section are separate limits and an expenditure made for an activity under one of these subsections is not applied to the limit under the other subsection.

[Statutory Authority: RCW 48.02.060, 48.29.005 and 48.29.210. WSR 09-05-077 (Matter No. R 2008-21), § 284-29-230, filed 2/17/09, effective 3/20/09.]

WAC 284-29-235 Educational seminars. (1) A title company may conduct educational programs at no charge only if the content of the program consists solely of education regarding title insurance, title to real property, and escrow topics.

(a) A title company must spend no more than ten dollars per person for refreshments at any one educational program.

(b) Any materials that the title company provides to attendees must be directly related to the topic of the seminar or are self-promotional advertising of the title company.

(2) A title company may provide a speaker at no charge for an educational program conducted or presented by other persons, only if the following conditions are met:

(a) The speaker is an employee of the title company;

(b) If a title insurance agent is providing the speaker, the speaker may be an employee of the title insurer for whom the title insurance agent has been properly appointed;

(c) The topic of the presentation by the employee is solely related to title insurance, escrow, or real property law; and

(d) Any materials that the speaker provides to attendees are directly related to the topic of the speaker or are self-promotional advertising of the title company of the employee.

(3) A title company may sponsor an educational seminar of a trade association subject to the limits in WAC 284-29-220.

(4) A title company may sponsor an educational program on topics other than title insurance, title to real property, and escrow only if:

(a) The educational program is open to all producers; and

(b) The attendees actually pay to attend the program the greater of:

(i) All expenses and costs associated with the delivery of the educational program by the title company; or

(ii) What the attendee would pay to attend a similar seminar sponsored by entities other than title companies on the open market.

The calculation by the title company of the expenses and costs associated with the delivery of the education program must include, but not be limited to, all travel, refreshments, speaker fees or wages of the speaker, facility rental, preparation of materials distributed at the program, parking, advertisement, and wages of arranging and planning for the program.

[Statutory Authority: RCW 48.02.060, 48.29.005 and 48.29.210. WSR 09-05-077 (Matter No. R 2008-21), § 284-29-235, filed 2/17/09, effective 3/20/09.]

WAC 284-29-240 Political action committees. Title companies and their employees may donate to registered political action committees.

[Statutory Authority: RCW 48.02.060, 48.29.005 and 48.29.210. WSR 09-05-077 (Matter No. R 2008-21), § 284-29-240, filed 2/17/09, effective 3/20/09.]

WAC 284-29-245 Locale of title company employees. A title company and its employees must not lease or rent a workspace location owned or leased by a producer unless all of the following conditions are met:

- (1) The space is secured by a bona fide written lease or rental agreement;
- (2) The rent paid for the workspace is consistent with the prevailing rent charged for similar space in the market area of the workspace;
- (3) Renting the space is not contingent upon the volume of title company business and is paid only in cash and not by trade or barter;
- (4) There is no sharing of employees unless the title company only pays for its reasonably proportionate share;
- (5) There is no common usage of equipment between the title company and the producer unless the title company only pays for its proportionate share; and
- (6) The workspace is occupied by a bona fide employee of the title company a minimum thirty hours per week, except for holidays and bona fide emergencies, and is open to the public during regular business hours. However, if for appropriate business reasons the title company ceases conducting business at the locale and there is a remaining term on the lease or rental agreement, the title company may continue to pay the rent until the expiration of the lease or rental agreement or the next renewal date of the lease or rental agreement, whichever is earlier.

[Statutory Authority: RCW 48.02.060, 48.29.005 and 48.29.210. WSR 09-05-077 (Matter No. R 2008-21), § 284-29-245, filed 2/17/09, effective 3/20/09.]

WAC 284-29-250 Memorial gifts and charitable contributions—Limitations. (1) A title company may provide no more than two hundred dollars in value of food, floral bouquets, or memorial donations for the death of a producer or a producer's immediate family member. This includes contributions to medical funds for a producer or a producer's seriously injured or seriously ill immediate family member.
(2) A title company may contribute to a charity only if:
(a) The contribution by the title company is made payable directly to the charity; and

(b) The solicitation for the contribution and the contribution are not, directly or indirectly, in exchange for the referral of title insurance business.

(3) Title company employees may attend and volunteer their time at events hosted by charities.

[Statutory Authority: RCW 48.02.060, 48.29.005 and 48.29.210. WSR 09-05-077 (Matter No. R 2008-21), § 284-29-250, filed 2/17/09, effective 3/20/09.]

WAC 284-29-255 Other things of value that title companies are permitted to give to producers.

(1) A title company must not give, offer to give, provide, or offer to provide nontitle services (for example: Computerized bookkeeping, forms management, computer programming, trust accounting for trust accounts not held in the name of the title company, short sale consultants, or transaction coordination) or any similar benefit to a producer, without charging and actually receiving a fee equal to the value of the services provided and in an amount at not less than what the producer would pay if the services were purchased on the open market or the title company's cost to provide the service, whichever is greater.

(2) A title company must not allow the use of any part of its premises (for example, its conference rooms or meeting rooms) to a producer without receiving a fair rental charge equal to the average rental for similar premises in the area.

(3) A title company may allow the use of a part of its premises (for example, its conference rooms or meeting rooms) for no charge to a meeting of a trade association for no more than four meetings in a calendar year.

(4) Title company employees may attend activities and business meetings of producers if all of the following standards are met:

(a) There is no cost to the employee or title company other than the employee's own entry fees, registration fees, meals, or other costs associated with the activity or business meeting;

(b) The fees paid by the title company are no greater than those charged to producer attendees; and

(c) If the title company pays a fee for an employee to attend the activity or business meeting, the title company employee must actually attend the activity or business meeting, unless an emergency prevents attendance.

(5) A title company may advance the recording fees for transactions for which the title company is either issuing the title insurance or conducting the escrow, or both, provided the title company is promptly reimbursed for the recording fees that it advanced.

[Statutory Authority: RCW 48.02.060, 48.29.005 and 48.29.210. WSR 09-05-077 (Matter No. R 2008-21), § 284-29-255, filed 2/17/09, effective 3/20/09.]

WAC 284-29-260 Examples of prohibited matters. The following is a partial, nonexclusive list of things of value that a title company must not give to a producer. Even though a thing of value is not included on this list a title company must not give any other things of value to a producer unless clearly and specifically permitted by WAC 284-29-200 through 284-29-255.

(1) Except as permitted in WAC 284-29-200 through 284-29-255:

(a) A title company must not cosponsor, subsidize, or contribute fees, prizes, gifts, or give things of value for a promotional function or activity off the title company's premises whether the function is self-promotional or not.

(b) Examples of off-premises functions or activities include, but are not limited to:

(i) Meetings;

(ii) Meals, including breakfasts, luncheons, dinners or cocktail parties;

(iii) Conventions, installation ceremonies, celebrations, hospitality rooms or similar functions;

(iv) Outings such as boat trips, fishing trips, motor vehicle rallies, sporting events of any kind, gambling trips, hunting trips, ski trips, shopping trips, golf tournaments, trips to or events at recreational or entertainment areas;

(v) Open house celebrations, or open houses at homes or property for sale;

(vi) Dances; or

(vii) Artistic performances.

(2) A title company must not sponsor, subsidize, supply prizes or labor, or otherwise give things of value for promotional activities of producers.

(3) A title company must not give or offer to give, either directly or indirectly, a compensating balance or deposit in a lending institution for the express or implied purpose of influencing the extension of credit by the lending institution to any producer.

(4) A title company must not disburse or offer to disburse on behalf of any person escrow funds held by the title company before the conditions of the escrow applicable to the disbursements are met.

(5) A title company must not advance, pay or offer to advance or pay money on behalf of any person into escrow to facilitate a closing unless:

(a) The property that is the subject of the escrow is owned by or being purchased by the title company;

(b) The payment is made in compliance with a court order requiring the title company to make the payment; or

(c) In settlement of a bona fide dispute for which the title company may be liable.

(6) A title company must not give, pay or offer to pay, either directly or indirectly, or make payment to a third party for the benefit of any producer for:

(a) The services of a title company employee or representative or an outside professional whose services are required by any producer to complete or structure a particular transaction;

(b) The salary or any part of compensation of an employee of a producer;

(c) The salary or any part of the salary, commission, or any other form of compensation to any employee of the title company who is at the same time actively engaged as a producer;

(d) A fee for making an inspection or appraisal of property, whether or not the fee bears a reasonable relationship to the services performed;

(e) Services required to be performed by any producer in his or her professional capacity;

(f) Any evidence of title or copy of the contents of a document which is not produced or issued by the title company;

(g) The rent for all or any part of any space occupied by any producer, except as provided in WAC 284-29-245;

(h) Money, prizes, or other things of value in any kind of a contest or promotional activity;

(i) Any advertisement published in the name of, for, or on behalf of any producer;

(j) A business form of any producer which is provided for the convenience and benefit of the producer, except a form regularly used in the conduct of the title company's business;

(k) Any earnest money purchase agreements or purchase and sale agreements;

(l) Flyer boxes and stands, for sale signs and posts, or services for the placement of any of them;

(m) Postcards, stamps, flyers, newsletters, folders, invitations, copying, cutting or services related to preparing any of these items;

(n) Car washes or coupons for car washes;

(o) Pictures of producers;

(p) Gift cards of in any amount;

(q) Massages;

(r) Discount certificates; or

(s) The cost of or reimbursement for advisory fees.

(7) A title company must not provide, or offer to provide, all or any part of the time or productive effort of any employee of the title company to any producer. For example, title company employees must not be used by or loaned out to a producer for the self-promotional interests of the producer except as part of the title company's day-to-day business with producers.

(8) A title company must not give or offer to give, pay for, or offer to pay for, furniture; office supplies, including but not limited to, file folders, telephones, computers or other equipment; or automobiles to any producer. A title company must not pay for, or offer to pay for, any portion of the cost of renting, leasing, operating, or maintaining any of these items.

(9) Delivery services between a title company and a producer must be performed by the title company's messenger service or employees and must consist only of delivering items directly related to the title company's title insurance or escrow business from the title company to a producer or from a producer to the title company.

(10) In accordance with its title insurance rates filed with the commissioner, a title company must not provide a title insurance commitment without actually receiving payment for the cancellation fee:

(a) For commitments on noncommercial property, within the earlier of the following:

(i) One hundred eighty days of the first issuance of the commitment; or

(ii) Sixty days of:

(A) The cancellation of the commitment;

(B) When the title company reasonably should know that the commitment has been canceled; or

(C) When the title company reasonably should know that the transaction for which the commitment was issued has been insured by another title company.

(b) For commitments on commercial property, within sixty days of the earlier of the following:

(i) The cancellation of the commitment;

(ii) When the title company reasonably should know that the commitment has been canceled; or

(iii) When the title company reasonably should know that the transaction for which the commitment was issued has been insured by another title company.

(11) A title company must not pay a producer member of its board of directors fees in excess of those paid to nonproducer directors.

(12) A title company must not enter into, agree to, or pay anything of value to a producer under any marketing agreement, access agreement, advertising agreement or any similar agreement.

(13) A title company must not make a donation to any charity in any manner that can reasonably be associated with a producer in exchange for the referral of title insurance business or obtaining customer service information from the title company.

(14) A title company must not pay any fee or consideration to any producer that is in any manner based in whole or in part on the number of transactions between the title company and the producer, regardless of the service being provided.

(15) A title company must not provide escrow, closing, or settlement services for a charge (independent of the rate charged for involved title insurance) that is less than the title company's actual cost either for:

(a) The cost of all parties to the escrow; or

(b) One party's proportionate share of the cost of the escrow.

[Statutory Authority: RCW 48.02.060, 48.29.005 and 48.29.210. WSR 09-05-077 (Matter No. R 2008-21), § 284-29-260, filed 2/17/09, effective 3/20/09.]

WAC 284-29-265 Recordkeeping. (1) A title company must keep and maintain complete, accurate, and sufficient records to demonstrate compliance with WAC 284-29-200 through this section and keep them for a period of five years after the end of the year during which any thing of value was given to a producer.

(2) All records of a title company kept in order to meet the terms of WAC 284-29-200 through this section must be made available to the commissioner or the commissioner's representative during regular business hours.

(3) Failure of the title company to keep the records required by WAC 284-29-200 through this section is a violation of RCW 48.29.210.

[Statutory Authority: RCW 48.02.060, 48.29.005 and 48.29.210. WSR 09-05-077 (Matter No. R 2008-21), § 284-29-265, filed 2/17/09, effective 3/20/09.]

WAC 284-29-300 Definitions. For purposes of WAC 284-29-300 through 284-29-340:

(1) "Closing" means the process of completing a real estate transaction in accordance with the written escrow instructions of the principle parties during which: Deeds, deeds of trust, mortgages, leases, and other required documents are either executed or delivered, or both; an accounting between the parties is made; the funds are disbursed; and the appropriate documents are recorded.

(2) "Escrow" has the meaning set forth in RCW 18.44.011(7).

(3) "Escrow agent" has the meaning set forth in RCW 18.44.011(8).

(4) "Escrow instructions" are the instructions, signed by the principal parties to the transaction, that identify the duties and re-

sponsibilities of the title insurance agent in carrying out the escrow, that identify the thing or things of value held by the title insurance agent, and the specified condition or set of conditions under which the thing or things of value are to be transferred.

(5) "Escrow trust account" means an account to hold funds in trust for third parties.

(6) "Federally insured financial institution" means a financial institution that has its deposits insured by an instrumentality of the federal government, including the Federal Deposit Insurance Corporation (FDIC), Federal Savings and Loan Insurance Corporation (FSLIC) and National Credit Union Administration (NCUA).

(7) "Positive pay" or "reverse positive pay" means any system by which the authenticity of a check is determined before payment is made by the financial institution against which the check is drawn.

(8) "Trial balance" means a list of all open individual escrow ledger record balances at the end of the reconciliation period.

(9) "Three-way reconciliation" means a method for discovering shortages (intentional or otherwise), charges that must be reimbursed or any type of errors or omissions that must be corrected in relation to an escrow trust account.

(10) "Unclaimed fund" means any fund that is abandoned under the Uniform Unclaimed Property Act, chapter 63.29 RCW.

[Statutory Authority: RCW 48.02.060 and 48.29.005. WSR 20-01-119 (Matter R 2016-05), § 284-29-300, filed 12/16/19, effective 1/16/20.]

WAC 284-29-310 Title insurance agent employment restrictions. A title insurance agent must not, without the written consent of the commissioner, employ any person that has been convicted of, or plead no contest to either:

(1) A felony involving dishonesty or a breach of trust within the last ten years; or

(2) A gross misdemeanor involving theft, fraud, forgery, embezzlement or the mishandling of funds, within the last year.

[Statutory Authority: RCW 48.02.060 and 48.29.005. WSR 20-01-119 (Matter R 2016-05), § 284-29-310, filed 12/16/19, effective 1/16/20.]

WAC 284-29-320 Title insurance agent escrow records. Under RCW 48.29.190 title insurance agents are required to keep adequate records of all transactions handled by the title insurance agent. These records must be in an organized form and must include and conform with the following requirements:

(1) An individual ledger for each escrow trust account for which funds are received. All of the transactions in the individual ledger must be accurate, posted, and kept current to the date of the most recent activity.

(2) All receipts and disbursements must be posted in the individual ledger, including:

(a) Credit entries that show the date of the deposit, amount, and name of the remitter;

(b) Debit entries that show the date of payment, amount of payment, name of the payee, wire transfer reference number, electronic payment reference number, or check number; and

(c) A monthly trial balance of each individual ledger.

(3) All documents pertinent to all individual trust account transaction activity must be retained, including:

(a) Original or imaged copies of checks clearing the bank (both front and back of the check);

(b) Bank debit memos when funds are disbursed via wire transfer and a copy of the instructions signed by the owner of the funds to be wire transferred identifying the receiving entity and account number;

(c) ACH confirmation or a copy of the confirmation screen. This retained documentation must, at a minimum, include payee, payment date, escrow account number debited, and the confirmation number assigned to the ACH transaction;

(d) Voided items and documents supporting all adjustments. All voided transactions must be posted or reflected in the individual client ledger and the receipts and disbursements ledger; and

(e) Bank statements.

(4) Transaction files containing all escrow instructions, closing statements, correspondence for each transaction, agreements, contracts, leases, and any other pertinent supporting documents necessary to validate the transaction.

(5) A computerized accounting system must:

(a) Provide a capability to back-up all data files; and

(b) At least monthly the receipt and check registers, bank reconciliation, client trial balance and transaction activity must be printed out or imaged and retained as a permanent record.

(6) At least quarterly, do the following:

(a) Conduct a review of all open client escrows and ensure that all outstanding payments are made for the purpose of resolving client escrow accounts and identifying unclaimed funds; and

(b) Contact the department of revenue for disposition instructions under chapter 63.29 RCW in the event that the title agent finds unclaimed funds. All correspondence related to unclaimed funds must be retained for five years.

[Statutory Authority: RCW 48.02.060 and 48.29.005. WSR 20-01-119 (Matter R 2016-05), § 284-29-320, filed 12/16/19, effective 1/16/20.]

WAC 284-29-330 Controls for escrow trust accounts. (1) All escrow trust account funds received by a title insurance agent must be deposited in the account not later than the first banking day following the receipt thereof.

(2) A title insurance agent must not make any disbursement from an escrow trust account unless it is in compliance with RCW 48.29.190 (1)(c).

(3) Escrow trust accounts and operating accounts of the title insurance agent must be separately maintained and not commingled with the title insurance agent's operating account or an employee or manager's personal account.

(4) On at least a monthly basis, the title insurance agent must prepare trial balances for all escrow trust accounts using a three-way reconciliation method which requires that the escrow trial balance, the book balance, and the reconciled bank balance be verified on all open escrow balances. If all three parts of the three-way reconciliation do not agree, the title insurance agent must identify and reconcile the difference within a commercially reasonable period of time.

(5) On at least a daily basis, reconciliation of the receipts and disbursements of the escrow trust account must be performed.

(6) Segregation of duties must be in place to ensure the reliability of the reconciliation and reconciliations must be conducted by someone other than those with signing authority.

(7) Results of the reconciliation must be reviewed and approved by management.

(8) Appropriate identification must appear on all account-related documentation including bank statements, bank agreements, disbursement checks, and deposit tickets to identify the account as an escrow trust account.

(9) Outstanding escrow trust account file balances must be documented.

(10) Appropriate authorization levels must be set by the title insurance agent and reviewed annually for updates. Former employees must immediately be deleted as listed signatories on all bank accounts of the title insurance agent.

(11) Unless directed by the beneficial owner, all escrow trust accounts must be maintained in federally insured financial institutions.

(12) The title insurance agent must use positive pay or reverse positive pay, automated clearing house blocks and international wire blocks, if available.

[Statutory Authority: RCW 48.02.060 and 48.29.005. WSR 20-01-119 (Matter R 2016-05), § 284-29-330, filed 12/16/19, effective 1/16/20.]

WAC 284-29-340 Retention of records after closure of business—

Notice. (1) Every title insurance agent providing escrow services must retain and preserve business and accounting records for five years after each transaction as required by RCW 48.29.190, 48.17.470, WAC 284-12-080, and 284-29-265 and must continue to do so after the business is closed.

(2) Every title insurance agent must provide the commissioner thirty days' advance written notice of its intent to close the business. This notice must provide the following:

(a) The most recently completed reconciliation of the escrow fund account to the trial balance and all supporting accounting records, including the escrow bank statement;

(b) A valid contact name, address, phone number, and email address;

(c) The location of the business records and how they are being retained; and

(d) A description how the records will be made available for inspection by the commissioner for five years after the date of completion of the escrow transactions as required by RCW 48.17.470.

[Statutory Authority: RCW 48.02.060 and 48.29.005. WSR 20-01-119 (Matter R 2016-05), § 284-29-340, filed 12/16/19, effective 1/16/20.]