

3901-7-01

Annual review of title insurance agent escrow accounts.

(A) Purpose

The purpose of this rule is to establish the criteria for the annual independent review of title ~~agent's~~ insurance agents' escrow, settlement, closing, and security deposit depository institution accounts.

(B) Authority

This rule is promulgated pursuant to the authority vested in the superintendent under sections 3901.041 and 3953.33 of the Revised Code.

(C) Definitions

As used in this rule:

~~(1) Affiliated company means any person that is, directly or indirectly, owned or controlled by the same person or by the same group of persons that directly or indirectly, own or control the business entity title insurance agent. This term includes parents and subsidiaries. Control and affiliated status shall be presumed to exist if a person, directly or indirectly, owns, controls, holds with the power to vote or hold proxies, representing ten percent or more of the voting securities of any other person.~~

~~(2)~~(1) "Agent" means either an individual title insurance agent or a business entity title insurance agent licensed by the Ohio department of insurance.

~~(3)~~(2) "Escrow account" includes any escrow, settlement, closing, or security deposit account owned or maintained by the title agent being reviewed.

~~(4)~~(3) "IOTA" account means "Interest on Trust Account", which is an escrow account established and maintained pursuant to section 3953.231 of the Revised Code.

~~(5)~~(4) "Person" means any natural person or any business entity as defined in section 3905.01 of the Revised Code.

(5) "Transaction" means the handling of client or third party funds related to any purchase or sale of real property, or any finance or refinance secured by a mortgage on real property.

(D) Each agent shall file, pursuant to paragraph (I) of this rule, either an independent annual review or an annual review claim of exemption on a form prescribed by the superintendent on or before January fifteenth for the preceding twelve month period

ending August thirty-first. Either filing must include all supplementary forms prescribed by the superintendent.

~~(D)~~(E) Independent annual review

Each agent that handles the funds of clients or third parties shall have an independent review made of all escrow accounts related to Ohio transactions each year and filed in accordance with paragraph (I) of this rule for the preceding twelve month period ending August thirty-first unless exempted from review as provided by paragraph (F) of this rule.

~~(1) Except as provided in paragraph (D)(2) of this rule, every individual title insurance agent and every business entity title insurance agent that handles the funds of clients or third parties shall have an independent review made of its escrow accounts each year on or before December thirty first for the preceding twelve month period ending August thirty first.~~

~~(2) Individual title insurance agents or business entity insurance agents that average five transactions or less per month with no single transaction exceeding five hundred thousand dollars during the twelve month period ending August thirty first may comply with the annual independent review requirements set forth in section 3953.33 of the Revised Code by completing appendices A, B, C and D to this rule and providing notification as set forth in paragraph (G) of this rule that it had been reviewed during that twelve month period by one of the title insurance companies by which it had been appointed. For purposes of this paragraph, "transactions" are defined as any purchase/sale of real property, or any finance or refinance secured by a mortgage on real property, and in which a title insurance policy or title guarantee has been issued. The review by the title insurance company must have included the procedures set forth in paragraph (F)(2)(e) of this rule.~~

(F) Exemptions

(1) An agent that does not handle escrow account funds related to Ohio transactions is exempt from the annual review requirements of section 3953.33 of the Revised Code.

(2) An agent that averages five Ohio transactions or less per month during the twelve month period ending August thirty-first is exempt from the annual review requirements of section 3953.33 of the Revised Code if the agent's escrow accounts have been reviewed during that twelve month period by one or more of the title insurance companies by which it had been appointed.

~~(E)~~(G) Independent reviewer qualifications

- (1) The independent reviewer must be a certified public accountant.
- (2) The independent reviewer may not be an employee of a title insurance company nor may the reviewer be an employee of or hold an ownership interest in:
 - (a) The business entity being reviewed,
 - (b) In any affiliates of the business entity being reviewed, ~~or~~
 - (c) In any owners of the business entity being reviewed, ~~or~~
 - (d) Any financial institution or its affiliate in which one or more escrow accounts subject to review under this rule are held.

~~(F)~~(H) Annual review

- (1) The annual review, as required under section 3953.33 of the Revised Code, shall be an agreed upon procedures engagement as defined in the "Statements on Standards for Attestation Engagements" issued by the "American Institute of Certified Public Accountants".
- (2) The review shall be constructed in accordance with the guidelines set forth below. Where no exceptions are found as a result of applying the procedure, the statement "no exceptions" should be noted. Where a procedure cannot be completed because the required information is unavailable, the statement "information unavailable" should be noted and explained in detail.
 - (a) Obtain from the agent a listing of all agent depository institution accounts existing at anytime during the review period, including operating and other non-fiduciary accounts on the annual review supplementary form as prescribed by the superintendent for depository account information. Have the agent certify that the ~~listing of depository institution accounts information on the supplementary form~~ is complete and accurate. ~~The listing should contain all of the information that is included in appendix A to this rule.~~
 - (i) ~~Identify~~ Report as specific findings all non-IOTA escrow accounts that do not have written instructions to either deposit the funds in an account for the benefit of a specific person or to pay the interest earned on the funds to a specific person.

- (ii) Report as a specific finding all non-IOTA escrow accounts in which any interest, in the form of cash or earnings credits, is retained by the agent ~~or paid to an owner or an affiliate of the agent~~. For the purpose of this rule, earnings credits means an adjustable dollar amount or factor based on the balance in a deposit account that reduces fees and charges on the account or other account(s) or for other services provided by the depository institution.
- ~~(b) Obtain a listing of all the agency's affiliated companies that are owned or controlled, in whole or in part, by a person or persons prohibited from acting as a title agent pursuant to division (B) of section 3953.21 of the Revised Code or by a builder or developer. Have the agent certify that the listing of affiliated companies is complete and accurate. The listing should contain all of the information that is included in appendix B to this rule.~~
- ~~(e)~~(b) Test the agent's three-way reconciliations (depository institution statement to book balance to open escrow trial balance) for the most recent monthly period the account existed on or before August thirty-first of the twelve month period being reviewed and for one other randomly selected month of the period being reviewed for all agent escrow accounts including, without limitation, all multiple and individual customer escrow accounts (regular, special/interest bearing, etc.), and other fiduciary accounts. Exclude from review single customer/single purpose accounts opened under the customer's taxpayer identification number and section 1031 tax deferred exchanges opened under the customer's taxpayer identification number. If the agent does not prepare an open escrow trial balance, note the omission as a specific finding and test any other type of depository institution reconciliation available. The test of the reconciliations should, include the following procedures:
- (i) Foot reconciliation and any supporting schedules;
 - (ii) Compare depository institution balance per reconciliation with depository institution statement and have agent provide a written explanation of any differences ~~in appendix E to this rule~~ on the annual review supplementary form as prescribed by the superintendent for agent explanations;
 - (iii) Compare book balance per reconciliation with control account such as check book balance and have agent provide a written explanation of any differences ~~in appendix E to this rule~~ on the

annual review supplementary form as prescribed by the superintendent for agent explanations;

- (iv) Compare reconciled balances to the open escrow trial balance of the same date and have agent provide a written explanation of any differences ~~in appendix E to this rule~~ on the annual review supplementary form as prescribed by the superintendent for agent explanations;
- (v) Review the agent's open escrow trial balance for the two monthly periods. Report the file number, customer name, and amount of each negative balance over ~~one~~ ten thousand dollars individually and the aggregate negative amount of all negative balances if such aggregate exceeds ~~five~~ fifteen thousand dollars;
- (vi) Verify deposits in transit by tracing deposits of five thousand dollars or greater and all deposits in transit for more than ~~two~~ thirty business days, as defined in division (M) of section 3953.01 of the Revised Code, to validated deposit slip or depository institution statement for the following month;
- (vii) Verify outstanding checks by tracing to ~~canceled checks returned with the subsequent month's depository institution statement or to the depository institution's electronic image of canceled checks.~~ Report the check number, check date, payee, and amount of all outstanding checks of ten thousand dollars or greater not clearing on the next month's depository institution statement;
- (viii) Report the amount and the agent's description of other reconciling items of one thousand dollars or more individually, or five thousand dollars in aggregate;
- (ix) ~~Obtain agent's voided checks procedure in appendix D to this rule.~~ Verify the agent has a voided checks procedure. The absence of a voided check procedure should be noted in the report.
- (x) Determine the timing of the preparation of the three-way and depository institution reconciliations for each of two months tested. Any reconciliations that were not documented as prepared within sixty days of the depository institution statement date should be noted as a specific finding. Reconciliations not documented as reviewed by management, as evidenced by management initials and date, should be noted ~~as a specific~~

finding- in the report:

- (xi) Review the escrow depository institution account statements for the sample months for the presence of negative daily balances, if provided on the statement, and depository institution charges for non-sufficient funds or overdraft charges. Report the aggregate amount of the above described charges, the number of negative balance days for the month, and the highest negative balance for the month; and
- (xii) For each escrow account, select a haphazard sample (as defined in the "American Institute of Certified Public Accountants Audit Sampling Guide") of twenty canceled checks and/or outgoing wire transfers per month for the sample two month periods and report the following:
 - (a) Checks or wire transfers one thousand dollars or greater payable to the agent, or to its affiliates or owners which do not correspond to fee amounts reflected in the documents in the related file;
 - (b) Checks or wire transfers with no file reference; and
 - (c) Any checks on which the check date is more than ~~thirty~~ sixty days prior to the depository institution clearing date;
 - (d) If canceled checks or images of checks are available, endorsements not consistent with the payee and/or alterations to canceled checks. Report if canceled checks or images are unavailable;
 - (e) Checks signed by other than authorized check signer.
- ~~(d)~~(c) List all states for which the agent conducts settlements.
- ~~(e)~~(d) Have the agent complete ~~appendix C to this rule which is a~~ and certify the annual review supplementary form as prescribed by the superintendent for listing of required insurance coverages coverage information. This schedule must be completed in its entirety by the agent.

~~(G)~~ Notification

- ~~(1) All title agents, whether or not subject to an annual review, shall submit copies of appendices A, B, and C to this rule directly to the department of insurance by January thirty first each year.~~
- ~~(2) The title insurance agent shall provide a copy of the annual review and completed copies of appendices A, B, C, D and E to this rule to each title company it represented during any portion of the review period and to each it represents as of the date the report is issued within fourteen days of the completion of the review.~~
- ~~(3) If no annual review has been performed because the agent did not own or maintain any escrow accounts during the twelve month period ending the preceding August thirty first, the agent shall notify each title insurance company it represents of the non review status on or before December thirty first of that same year.~~
- ~~(4) Each title insurance company shall notify the department of insurance's enforcement division of the following by January thirty first:
 - ~~(a) Each title insurance agent who has failed to file with the company either an annual review or a notification of non review status, and~~
 - ~~(b) Each title insurance agent whose annual review contains specific findings. A copy of the review and all schedules shall be attached to the notification.~~~~

(I) Filing

(1) Required documents.

- (a) Each agent subject to the provisions of paragraph (E) of this rule shall file the original independent annual review together with all required supplementary information on forms prescribed by the superintendent.
- (b) Each agent exempt from the independent annual review requirements of section 3953.33 of the Revised Code by the provisions of paragraph (F) of this rule shall file an annual review exemption together with all required supplementary information on forms prescribed by the superintendent.

(2) Procedure

- (a) Each agent shall file all required documents electronically unless unable to do so.
- (b) An agent unable to file the required documents electronically may make a

paper filing:

(i) All paper filings including the independent annual review shall be unbound, unstapled, and unfastened, printed single-side only on eight and one-half by eleven inch paper.

(ii) The filing shall be mailed to the enforcement division of the Ohio department of insurance.

(3) Filing. Every agent shall electronically file no later than January fifteenth of each year or shall mail postmarked no later than January fifteenth of each year, the required documents for the preceding twelve month period ending August thirty-first.

(4) Each agent shall mail to each title insurance underwriter it represented during any portion of the review period, postmarked not later than January fifteenth of each year, a copy the filing for the preceding twelve month period ending August thirty-first.

~~(H)~~(J) Severability

If any paragraph, term, or provision of this rule is adjudged invalid for any reason, the judgment shall not affect, impair or invalidate any other paragraph, term, or provision of this rule, but the remaining paragraphs, terms, and provisions shall be and continue in full force and effect.

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CERTIFIED ELECTRONICALLY

Certification

07/23/2010

Date

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