

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Insurance
Regulation/Package Title: Title Insurance
Rule Number(s): 3901-7-01, 3901-7-02, 3901-7-03, 3901-7-04

Date: June 13, 2016

Rule Type:

- | | |
|---|---|
| <input type="checkbox"/> New | <input checked="" type="checkbox"/> 5-Year Review |
| <input checked="" type="checkbox"/> Amended | <input checked="" type="checkbox"/> No Change |
| <input type="checkbox"/> Rescinded | |

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

Rule 3901-7-01 establishes criteria for the annual independent review of title insurance agents' escrow, settlement, closing and security deposit depository institution accounts.

Rule 3901-7-02 sets forth the requirements regarding surety bond and errors and omissions coverage to be maintained by title insurance agents or agencies under conditions specified in section 3953.23 of the Revised Code.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117
CSIOhio@governor.ohio.gov

Rule 3901-7-03 sets forth the requirements regarding notice to be provided to mortgagors by title insurance agents concerning title insurance coverage under conditions specified in section 3953.30 of the Revised Code.

Rule 3901-7-04 establishes ownership and licensing standards for title insurance agents in accordance with division (B) section 3953.21 of the Revised Code, which prohibits certain persons from acting as agents for a title insurance company. The proposed amendment strikes paragraph (H), which states that the application of paragraph (D), which does not allow a business entity title insurance agent (agency) from being controlled by a prohibited person pursuant to division (B) of section 3953.21 of the Revised Code, only applies to business entity agents license after the original effective date of the rule. The 2010 amendments to section 3905.06 of the Revised Code requiring renewal of an Ohio insurance agent license changed the license from one held in perpetuity to one for a specified term of two years, with each renewal being considered a new license. Rule 3901-7-04 of the Administrative Code was enacted prior to the license renewal requirement. Now that each renewal license is considered a new license, paragraph (H) is meaningless.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

Rule 3901-7-01: sections 3901.041 and 3953.33 of the Revised Code.

Rule 3901-7-02: sections 3901.041 and 3953.23 of the Revised Code.

Rule 3901-7-03: sections 3901.041 and 3953.30 of the Revised Code.

Rule 3901-7-04: sections 3901.041 and 3953.21(B) of the Revised Code.

3. Does the regulation implement a federal requirement? ☐ Yes ☒ No

Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

☐ Yes ☒ No

If yes, please briefly explain the source and substance of the federal requirement.

Not applicable.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

Not applicable.

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

Rule 3901-7-01: The public purpose is to ensure appropriate financial reviews are in place to protect consumers when agents are handling escrow transactions. Statute requires that any title agent handling escrow accounts shall have an independent review made of those

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escrow accounts, and requires the superintendent to establish a rule setting forth requirements of the independent review and its filing.

Rule 3901-7-02: The public purpose is protection of consumers in the event of theft, fraud, misappropriation and/or agency errors. Statute requires all title agents to carry errors and omissions coverage, and all title agents handling escrow transactions to obtain surety bonds. Statute also requires the superintendent to establish a rule setting minimum limits, requirements and terms and conditions of coverage.

Rule 3901-7-03: The public purpose of the rule is to ensure borrowers are provided adequate awareness regarding the lender's title insurance policy and availability of owner's title insurance. Statute requires that when a title insurance agent issues a lender's title insurance policy, and where no owner's title insurance policy has been requested, the agent shall provide notice that makes the borrower aware that the lender's policy does not offer the protection an owner's policy does. The notice shall explain what is covered, as well as what would be covered with an owner's title policy.

Rule 3901-7-04: The public purpose is to protect consumers against inappropriate and illegal controlled business arrangements within the title insurance industry. Statute prohibits banks, mortgage lenders or brokers and real estate companies from acting as agents for title insurance companies. The rule describes the level of ownership related to a title insurance agent that would constitute control of the title insurance agency business, and thus constitute acting as an agent.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

Rule 3901-7-01: Success is measured by full compliance of all impacted title insurance agents providing the necessary independent review filings by the annual deadline.

Rule 3901-7-02: Success is measured, through the license application and renewal review process, by documenting that all title insurance agents handling escrow transactions are affirming they hold the required amounts of bonds and errors and omissions coverage.

Rule 3901-7-03: Success is measured by the absence of complaints or requests to investigate title agents for failure to communicate adequately and provide notice of lender's title policy coverage scope.

Rule 3901-7-04: Success is measured through the license application and renewal process, specifically by ensuring compliance with statutory requirements and prohibitions during license application review.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation. *If applicable, please include the date and medium by which the stakeholders were initially contacted.*

Interested stakeholders for these rules include Ohio Association of Independent Title Agents (OAITA), Ohio Land Title Association (OLTA), Ohio Insurance Institute (OII), and Ohio Insurance Agents Association (OIA). The department posted the rule chapter on its website for public review and made trade associations representing insurance companies aware the rules were due for five year review. In addition, in May 2016, an email requesting comment on the rules were sent to various stakeholders, interested parties, and trade associations who signed up for updates on the department's rules and bulletins.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

The department has received no feedback or requests for changes on any of the rules or proposed amendments.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

Rule 3901-7-01: The rule applies best practice procedures as defined by American Institute of Certified Public Accountants, and clarifies the types of information and activities related to escrow accounts to have reviewed to meet those standards.

Rule 3901-7-02: Statute requires the errors and omissions coverage and bond regulated by the rule. In setting the coverage limitations, the department considered the market premium costs weighed by the anticipated coverage level needed to protect consumers' funds during property transactions and escrow.

Rule 3901-7-03: Statute requires the notice and what must be included in the notice, and development of this rule did not require additional data or research to develop the rule.

Rule 3901-7-04: The prohibition against certain persons acting as agents is statutory, so no additional data was needed to implement the general requirement of the rule. The rule, however, proscribes what constitutes controlling an agency (business entity agent) and thus acting as an agent. The threshold in rule, 50% or greater ownership, is compatible with a reasonable level of ownership that would indicate controlling ownership. Lower than majority ownership was deemed too restrictive and without merit in terms of assuming control, or acting as an agent, is occurring simply for owning non-controlling interest in an agency.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

Rule 3901-7-01: The rule established filing form and content for independent reviews that are required by statute. There was no authority nor need in this case to consider alternatives.

Rule 3901-7-02: The general requirements of the rule are set in statute. The coverage amounts of the bond and errors and omissions insurance requirements could have allowed for alternate (or higher) minimums. The department is continuing the established minimums as a balance that protects consumers while not placing undue burden in business costs for the title agents.

Rule 3901-7-03: The notices required in the rule are set in statute and there were no alternatives to consider beyond the form and content of the notice provided in the rule. The form established in the rule provides the explanation necessary for the borrower to understand the coverage limitations in a lender's policy and the availability of purchasing owners' coverage.

Rule 3901-7-04: Statute prohibits a person engaged in certain lines of business (e.g., realtors or mortgage lenders) from also serving as licensed title agents. The rule establishes the level of ownership or interest of an agency (business entity agent) would constitute control of that agency and therefore acting as a licensed agent. Alternatives considered in the past have included discussion of different levels of ownership regarding control of the business. The department continues to consider that 50% or greater constitutes control of the agency, as is standard across most industries when considering level of control.

11. Did the Agency specifically consider a performance-based regulation? Please explain.

Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

None of the rules are fitting for performances-based regulations, but are instead rules that establish requirements for annual review filings, minimum coverage standards, borrower notices and agency ownership prohibitions. The requirements of the rules are conditions of title agent licensure.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

The department is the only agency responsible for regulating title insurance companies and title agents, and there are no duplicate rules.

13. Please describe the Agency’s plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

The rules have been in place already and three of the rules have no changes and therefore require no further implementation. The proposed amendment in rule 3901-7-04 does not add a new requirement to implement but rather eliminates an exception clause that has become obsolete and is not currently practiced during license application processing. Current title agent license holders are aware of the requirements and prohibitions. The amendment allows for a more consistent application of the rule as the rule will no longer allow for exceptions.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:
- Identify the scope of the impacted business community;
 - Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and
 - Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.

Impacted business community members for the four title insurance rules are title agents. Nature of impact and estimated costs are as follows:

Rule 3901-7-01: Title agents handling escrow accounts must have an annual independent financial review conducted. The estimated cost for CPA review ranges from \$800-\$1,000 per review. The review can be submitted electronically when filing with the superintendent, which can be done in less than a half hour.

Rule 3901-7-02: Title insurance agents must maintain errors and omissions insurance with minimum coverage of \$250,000. Though insurance cost would vary for each business, it is estimated to be available for \$600-\$1,500 annual premium. Title agents handling escrow for transactions that involve no title insurance must maintain surety bonds with minimum coverage of \$150,000. Though cost varies according to credit and other factors, bonds for this level of coverage are estimated to be available for \$2,000-\$5,000.

Rule 3901-7-03: When a lender's title insurance policy is issued for a sale where no owner's policy has been requested, title agents must provide notice regarding availability and cost of owner's title insurance, as well as the difference in scope of owner's and lender's title policies. The staff time cost of compliance would include time to research cost range for owner's policy and administrative time to complete the notice form. It is anticipated each notice could be completed in a hour or less.

Rule 3901-7-04: The rule describes the requirements that must exist in order for a business entity title agent to be eligible for licensure, and does not directly impose cost or impact. The licensure requirement itself occurs in statute and a different rule. This rule provides information and standards for eligibility, specifically relating to statutory prohibition of certain persons in other businesses acting as title agents or having control of title insurance agencies. Implementation occurs consistently and according to current operating practice during the license application and renewal review process.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

For all the rules consumer protection is the primary reason and need for the requirements. In addition, the requirements and prohibitions for the rules are imposed by statute.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

No. The requirements and prohibitions represented in the rules are generally based on activities, transactions or type of work performed.

Rule 3901-7-01: While there are no exemptions from meeting the requirements based on size of the business; the rule does include an exemption if there are fewer than an average of five transactions per month where the agent is handling escrow funds.

Rule 3901-7-02: The errors and omission insurance coverage and surety bond coverage requirements are not related to business size and are in place to ensure consumers' risks are protected when title insurance and funds-handling services are provided by the business.

Rule 3901-7-03: The notice requirement when issuing lender's title policies are based on the occurrence or transaction and the same requirement exists regardless of business size.

Rule 3901-7-04: The requirements related to control and ownership of title insurance agencies are consistent regardless of size of the agency.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

As all of the rules regard conditions of title agent licensure and licensure eligibility requirements, the general goal is to work with any individual or business entity to meet the compliance standards in order to be able to continue doing business or become eligible if capable.

18. What resources are available to assist small businesses with compliance of the regulation?

Department staff is available to answer questions and provide assistance as needed.