



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Sean McCullough, Director

MEMORANDUM

TO: Loretta Medved, Ohio Department of Insurance

FROM: Joseph Baker, Business Advocate

DATE: September 14, 2021

RE: **CSI Review – Title Insurance Rules (OAC 3901-7-01, 3901-7-02, 3901-7-03, and 3901-7-04)**

On behalf of Lt. Governor Jon Husted, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Department as provided for in ORC 107.54.

Analysis

This rule package consists of one amended and three no change rules proposed by the Ohio Department of Insurance (Department) as a part of the statutory five-year review process. This rule package was submitted to the CSI Office on July 14, 2021, and the public comment period was held open through July 28, 2021. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on July 14, 2021.

The rules in this package establish standards related to the review and practices of title insurance agents, including financial management and auditing practices, insurance coverage minimums, reporting requirements, notification responsibilities, and ownership interest standards.

OAC 3901-7-01 establishes criteria for an independent review of title insurance agents' escrow, settlement, closing, and security deposit accounts. The rule requires each agent to file an independent review or filing exemption claim annually, outlining various information requested by the Department to demonstrate appropriate management of financial accounts. OAC 3901-7-02 requires title insurance agents and agencies to maintain a surety bond of at least \$150,000 to

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

protect against theft, misappropriation, fraud, or any other failure to disburse settlement, closing, or escrow funds. The rule also requires the maintenance of errors and omissions insurance coverage of at least \$250,000 (including \$50,000 coverage for any subcontractors that act on behalf of the title insurance company) to report insurance maintained under the rule to the Department during the annual escrow account review conducted per OAC 3801-7-01.

OAC 3901-7-03 requires title insurance agents or agencies that issue a lender's title insurance policy connected to a residential mortgage loan to provide written notice and to maintain a copy of the notice for at least 10 years after the effective date of the lender's title insurance policy. The written notice must inform the property owner that the mortgage lender holds a policy protecting the mortgage lender against potential defects connected to the property title and that the property owner may obtain coverage protecting his or her interests through the purchase of an owner's policy. The rule also prescribes the exact language of the form as an appendix to the rule. The rule is amended to correct a citation.

Lastly, OAC 3901-7-04 establishes ownership and licensing standards for title insurance agents and agencies, including prohibiting certain entities from owning or controlling a title insurance company. Such entities prohibited from acting as title agencies include banks, trust companies, bank and trust companies, lending institutions, mortgage services companies, brokerages, escrow companies, real estate companies, and mortgage guaranty companies, as well as any subsidiaries of or individuals employed by such companies. The rule further identifies criteria for evaluating the legitimacy of a title insurance company, such as whether it has sufficient initial capital to conduct the business, is staffed with its own employees, can provide substantial services, and manages its own business affairs, among others.

During early stakeholder outreach, the Department shared the proposed rules with various interested parties including the Ohio Insurance Institute, the Ohio Land Title Association, the Association of Ohio Life Insurance Companies, the American Council of Life Insurance, the National Association of Insurance and Financial Advisors, the Ohio Association of Health Plans, and the Professional Independent Agents Association, among others. No comments were provided in response to the request for early stakeholder outreach or during the CSI public comment period.

The business community impacted by the rules includes title agents licensed to practice in Ohio. The adverse impacts to business include the costs of an annual independent financial review and the administrative expenses associated with conducting the review and submitting the report to the Department. The Department estimates the cost of the review at approximately \$800-\$1,000 annually. The adverse impacts also include the cost of maintaining errors and omissions insurance and surety bonds. The Department estimates the cost of errors and omissions coverage ranges

between \$600-\$1,500 annually, while the cost of surety bonds may range between \$2,000-\$5,000. The adverse impacts identified by the Department also include the administrative effort necessary to provide notice regarding the availability and cost of owner's title insurance, which the Department estimates will require less than an hour of staff time. Lastly, the adverse impacts to business include the loss of business opportunity associated with the denial of a title agent license application if the applicant is engaged in certain lines of business, which reflects ORC 3953.21(B). The Department states in the BIA that the adverse impacts to business created by these rules are necessary to preserve consumer protection and meet statutory requirements.

Recommendations

Based on the information above, the CSI Office has no recommendations on this rule package.

Conclusion

The CSI Office concludes that the Ohio Department of Insurance should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.