

STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

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TITLE INSURANCE COLLECTIONS AND ACTIVITIES

ORDER R92-1

The Director of Insurance does hereby find as follows:

Background

1. In late fall 1991, the Division of Insurance completed a series of examinations of title insurance agents in the Anchorage recording district. The examinations were designed to test compliance with Alaska statutes governing rates, escrow charges and rebates. Compliance with previously issued Order 81-3 was also tested.
2. The examinations revealed a number of issues which were addressed individually as recommendations in the various examination reports. The nature of the market place, however, is such that individual implementation of the recommendations could result in a competitive disadvantage. It was felt that a uniform application of the recommendations to all title business is the only reasonable method of implementation.
3. In January 1991, a Notice of Public Hearing was published proposing a regulatory hearing to adopt recommendations made in the various reports of examination. The hearing was held on February 19, 1992 at the Z. J. Loussac Library in Anchorage, Alaska.

Charge for Services

4. On June 25, 1981, the director issued Order 81-3. In that order it was noted that the title plant is required of a title insurer or its agent. It represents a substantial investment in its initial creation and in its maintenance. It exists to facilitate the examination of title for the purpose of insuring title. This fact led to sections B and C of that order which read:

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"B. Any class of service including, but not limited to, issuance of title insurance policies, preliminary reports, property profiles, listing packages or packets, delivered or provided in this state by a title insurance company or title insurance agent, which relies in whole or in part upon documents contained in the title plant or the public record, must bear a charge commensurate with the cost of delivering or providing that class of service."

"C. A charge required under 'B' of this order may not be waived, except that a preliminary report need not be charged if it is replaced by a title policy."

5. Order 81-3 however did not address the issue of timing on billings for title plant based activities. The division's examiners have found situations where the billing of a preliminary commitment for title insurance
 - √ was delayed for substantial periods of time because the transfer of property was delayed;
 - √ was delayed or did not occur because the deal fell through with the proposed buyer;
 - √ did not occur even when the order was placed elsewhere or canceled; or,
 - √ did not occur for reasons which were not detected.
6. The division considered a rule that would have required the immediate collection of a charge for any use of the title plant including a deposit for the typical situation where a preliminary commitment is issued and is followed by a title policy a substantial time distant. Title insurance professionals felt that such a move would be too dramatic a shift in practice and in their operations. The resultant procedure ordered in section B of this order was viewed as a more reasonable reflection of what is practicable.

"OPEN" Liability

7. The division's examiners noted a practice utilized by several of the examinees wherein the amount of liability listed on a preliminary commitment was shown as "OPEN." The practice of committing to an unstated, unlimited or open ended liability is hazardous.

Documenting Rate Calculation

8. The division's examiners observed that rarely were the specific rules used to rate a policy or commitment to title insurance shown in the file. In many cases the actual calculations are not shown. This lack of documentation enhances the opportunity for error in rating this line of insurance.

Activity Logs

9. Most files reviewed lacked an activity log. In many cases, individual file were organized in a fashion that made review and recreation of the decision process difficult if not impossible. The division's examiners recommended the use of an activity logs to overcome such a deficiency and as it is a good management particularly where some complication has arisen in the examination of the title. While the division would like to see such logs used in each file it appreciates that many file are uncomplicated and the log would constitute an added burden. Rather than mandate a log for all files as proposed in the hearing notice, we suggest to insurers and their agents that logs are an appropriate tool for their more complicated transactions.

The Director of Insurance hereby orders:

- A. Sections B. and C. of Order 81-3 issued on June 25, 1981 are withdrawn and replaced with this order.
- B. A class of service delivered or provided in this state by a title insurance company or title insurance agent which relies in whole or in part upon documents contained in the title plant or public record, shall bear a charge commensurate with the cost of delivering or providing that class of service. A class of services does not include property profiles, listing packages, or copies of individual documents and maps, on a single property. The charge shall be billed when the service is provided. The charge shall be collected within 30 days of the first billing. The charge for service may be credited to the subsequent issue of a title insurance policy in accordance with the underwriter's filed rate schedule. Delayed payment or nonpayment of premium due for a class of service as noted above may be viewed as a rebate or inducement under AS 21.66.310.
- C. A title insurance company or title insurance agent shall immediately discontinue the use of the word "OPEN" to indicate the liability it is accepting with the issuance of a preliminary commitment to title insurance or the premium or charge required for its use of the title plant. The word "OPEN" in the liability or amount of coverage part of the preliminary commitment may be replaced with the phrase "Not Disclosed*" or "Not Known*" and the following explanatory language must be shown. **"*Note: This commitment is tentative until such time as we are advised of the final amount of insurance and/or proposed insured; in the event of cancellation, our fee is the minimum amount shown above." The premium should be stated as not less than the minimum charge provided in the insurers filed schedule of rates followed by the words "Minimum Charge."**

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- D. A title insurance company or title insurance agent shall clearly reference the rating schedule rule or rules utilized on the particular order and provide the calculation of the final rate to be applied.
- E. This order takes effect on May 18, 1992.

Done this 4th day of May, 1992.



David J. Walsh
Director