

Title Survey Question #1

1. **Has your state experienced or addressed issues with title agencies and insurers failing to provide the consumer with a policy and clean title for which they paid?**
 - a. **If so, please provide additional information and/or any appropriate laws or regulations.**

State	Comments
Arkansas	Yes. We are starting to see this more and more which is what prompted my question. Arkansas has very minimal laws in place to regulate timely final policy issuance and premium remittance. For the most part, our title agencies do a good job getting final policies issued, but there are always those few who do not seem to care or feel that the guidelines in place do not apply to them. Or, there are more serious issues within that agency. This is why we feel we should perhaps expand our laws governing both issues. Ark. Code Ann. § 23-103-407(2) states The written contract shall establish the responsibilities of the title insurer and title insurance agency and specify the division of responsibilities if both share responsibility for a particular function and Ark. Code Ann. § 23-103-407(3)(G)(i) The date by which all funds and policies due under the contract shall be accounted for to the title insurer. Ark. Code Ann. § 23-103-407(3)(G)(ii) states The date shall be no later than sixty (60) days after: (a) Issuance of the policy; (b)

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1. Knowingly collecting any sum as a premium or charge for insurance, which is not then provided, or is not in due course to be provided, subject to acceptance of the risk by the insurer, by an insurance policy issued by an insurer as permitted by this code.

626.8437 Grounds for denial, suspension, revocation, or refusal to renew license or appointment.—The department shall deny, suspend, revoke, or refuse to renew or continue the license or appointment of any title insurance agent or agency, and it shall suspend or revoke the eligibility to hold a license or appointment of such person, if it finds that as to the applicant, licensee, appointee, or any principal thereof, any one or more of the following grounds exist:

4) Demonstrated lack of fitness or trustworthiness to represent a title insurer in the issuance of its commitments, binders, policies of title insurance, or guarantees of title.

(5) Demonstrated lack of reasonably adequate knowledge and technical competence to engage in the transactions authorized by the license or appointment.

(6) Fraudulent or dishonest practices in the conduct of business under the license or appointment.

(7) Misappropriation, conversion, or unlawful withholding of moneys belonging to title insurers or insureds or others and received in conduct of business under the license or appointment.

(9) Willful failure to comply with, or willful violation of, any proper order or rule of the department or willful

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<p>(b) The commissioner may reprimand, levy a civil penalty, place an insurance producer on probation, suspend an insurance producer's license, revoke an insurance producer's license for a period of years, permanently revoke an insurance producer's license, or refuse to issue or renew an insurance producer license, or take any combination of these actions, for any of the following causes:</p>

<p>(8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in Indiana or elsewhere.</p>
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	http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+55-525.27
Washington	<p>The State of Washington requires that the funds received by title agents are received in a fiduciary capacity, account for the funds, and promptly pay them to the insurer (RCW 48.17.480). Further the premiums must be deposited into a separate premium account (RCW 48.17.600 & WAC 284-12-080). A willful violation of these requirements is a crime.</p> <p>As to the delivery of the policies, Washington state has a statute (RCW 48.18.260) that requires that insurance policies (including title insurance policies) be delivered to the insured within a reasonable time after its issuance. We also have rule that makes the title insurer responsible for delivery of the policy if it relies on its appointed agents to issue the policies (WAC 384-30-580).</p> <p>Links to these statute and rules are:</p> <p>RCW 48.17.480 http://apps.leg.wa.gov/rcw/default.aspx?cite=48.17.480 RCW 48.17.600 http://apps.leg.wa.gov/rcw/default.aspx?cite=48.17.600 WAC 284-12-080 http://apps.leg.wa.gov/wac/default.aspx?cite=284-12-080 RCW 48.18.260 http://apps.leg.wa.gov/rcw/default.aspx?cite=48.18.260 WAC 284-30-580 http://apps.leg.wa.gov/wac/default.aspx?cite=284-30-580</p>
Wyoming	No

Title Survey Question#

2. Has your state experienced or addressed issues with agencies failing to remit premiums to their appointed insurers
 - a. If so, please provide additional information and/or any appropriate laws or regulations

State	Comments
Arkansas	Yes. Since taking over regulation of Title in 2008, the Department has revoked the licenses of one (1) agent and two (2) agencies specifically for failure to remit premiums to their appointed insurers. One owed approximately \$44,000 in premiums; the other owed \$16,550. After license revocation, these individuals were turned over to our Criminal Investigation Division.

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the title insurance agent for a period of three years. The ledger card required by this rule may be maintained in computer storage with a print-out available upon request of a title insurer or the Office.

690-186.010 Insurer's Assumption of Certain Liabilities.

Any form of written notice issued after the effective date of this rule by a title insurer or business trust title insurer assuming liability for loss in accordance with Section 627.786, Florida Statutes, shall be in the following form and content:

(Date)

RE: (Insert name of
Issuing Agent or
Approved Attorney)

(TITLE INSURER'S LETTERHEAD)

When title insurance of (insert title insurer) is specified for your protection in connection with closings of real estate transactions in which you are to be the lessee or purchaser of an interest in land or a lender secured by a mortgage (including any other security instrument) of an interest in land, the (insert title insurer), subject to the Conditions and Exclusions set forth below, hereby agrees to reimburse you for actual loss incurred by you in connection with such closing when conducted by said Issuing Agent or Approved Attorney when such loss arises out of:

1. Failure of said Issuing Agent or Approved Attorney to comply with your written closing instructions to the extent that they relate to (a) the status of the title to said interest in land or the validity, enforceability and priority of the lien of said mortgage on said interest in land, including the obtaining of documents and the disbursement of funds necessary to establish such status of title or lien, or (b) the obtaining of any other document, specifically required by you, but not to the extent that said instructions require a determination of the validity, enforceability or effectiveness of such other document, or (c) the collection and payment of funds due you, or

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	<p>found scattered instances of this and it has not, to date, been an overwhelming problem. I am aware of two cases where an insurer filed a complaint with the Department regarding an agent's non-payment of premium. The Department was successful in proving its charges that the agents had violated both the statute referenced above as well as:</p> <p>IC 27-1-15.6-12(b)</p> <p>(4) Improperly withholding, misappropriating, or converting any monies or properties received in the course of doing insurance business.</p> <p>b. If so, please provide additional information and/or any appropriate laws or regulations.</p> <p>We do note, periodically during our examinations, that agents can be required by their underwriting contracts to maintain the underwriter's share of the premium in a separate trust or escrow account. It does not seem that the underwriters enforce this contract provision with regularity. Where we find the provision and it is not being followed we point it out to the agent and suggest it as a best business practice.</p>
<p>Kansas Kentucky</p>	<p>Not for title Involving 2 title examinations vd12 121.32 245. 12 -ex1S2 123 eons ET u10(2r)7(c)7(8.72 580.9</p>

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2. Has your state experienced or addressed issues with agencies failing to remit premiums to their appointed insurers
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Michigan	
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Neb. Rev. Stat. § 44-19,114: <http://nebraskalegislature.gov/laws/statutes.php?statute=44-19,114>

210 Neb. Admin. R. & Regs. 34: [http://www.sos.ne.gov/rules-and-](http://www.sos.ne.gov/rules-and-regs/regsearch/Rules/Insurance_Dept_of/Title-210/Chapter-34.pdf)

[regs/regsearch/Rules/Insurance_Dept_of/Title-210/Chapter-34.pdf](http://www.sos.ne.gov/rules-and-regs/regsearch/Rules/Insurance_Dept_of/Title-210/Chapter-34.pdf) 1.86§§ 36561-44-493.020.362(a)40(h)46614.

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	<p>http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+55-525.24</p> <p>Virginia Code Section 55-525.27 outlines the record retention requirements. The settlement agent shall maintain sufficient records of its affairs so that the appropriate licensing authority may adequately ensure that the settlement agent is in compliance with all provisions of this chapter. The settlement agent shall retain records pertaining to each settlement handled for a minimum of five years after the settlement is completed. The appropriate licensing authority may prescribe the specific record entries and documents to be kept.</p> <p>http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+55-525.27</p>
Washington	<p>The State of Washington requires that the funds received by title agents are received in a fiduciary capacity, account for the funds, and promptly pay them to the insurer (RCW 48.17.480). Further the premiums must be deposited into a separate premium account (RCW 48.17.600 & WAC 284-12-080). A willful violation of these requirements is a crime.</p> <p>As to the delivery of the policies, Washington state has a statute (RCW 48.18.260) that requires that insurance policies (including title insurance policies) be delivered to the insured within a reasonable time after its issuance. We also have rule that makes the title insurer responsible for delivery of the policy if it relies on its appointed agents to issue the policies (WAC 384-30-580).</p> <p>Links to these statute and rules are:</p> <p>RCW 48.17.480 http://apps.leg.wa.gov/rcw/default.aspx?cite=48.17.480 RCW 48.17.600 http://apps.leg.wa.gov/rcw/default.aspx?cite=48.17.600 WAC 284-12-080 http://apps.leg.wa.gov/wac/default.aspx?cite=284-12-080 RCW 48.18.260 http://apps.leg.wa.gov/rcw/default.aspx?cite=48.18.260 WAC 284-30-580 http://apps.leg.wa.gov/wac/default.aspx?cite=284-30-580</p>
Wyoming	No

Title Survey Question #3

- 3. Has your state experienced or addressed issues with agents failing to send out the policies they have sold?
 - a. If so, please provide additional information and/or any appropriate laws or regulations.

State	Comments
Arkansas	<p data-bbox="428 318 1911 423">We have an open investigation of an agency where this issue appears to be rampant. Understandably, I cannot discuss this matter further, but will be able to give details and resolution after finalizing the investigation.</p> <p data-bbox="428 464 1911 677">Up until the discoveries made in the investigation referenced above, we only got reports of random policies not being issued. We get a lot of reports from Lenders with regard to Mortgagee's policies and, admittedly, sometimes the Lenders could not confirm if the policy had never been delivered or if it had been misplaced. Also, I have had several complaints of consumers not receiving their final policies. We actively address this with the agency and work towards getting the policies delivered. We then address the consequences with the agency and seek a solution to the problem.</p>

Title Survey

Title Survey Question #4

4. Has your state experienced or addressed issues with closers failing to perform closing services for which they received a fee?
 - a.

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 - a. If so, please provide additional information and/or any appropriate laws or regulations.

	<p>letter issued, the responsibility of the insurer for acts or inactions of its agents in performing their closing duties is subject to case law, a discussion of which is well beyond this questionnaire. Joyce Palomar's reference service, "Title Insurance Law" includes an extensive treatment of the subject.</p> <p>We have statutes that address an agency's failure to disburse escrow funds properly. Please see 626.8473, 626.8437, and 626.844 quoted above.</p>
Idaho	<p>The Idaho Department of Insurance only has jurisdiction of escrow closings conducted by title agents, other parties that conduct closing are licensed by the Department of Finance. We have NOT experienced issues involving title agents not performing closing services for which they have received a fee.</p>
Indiana	<p>Indiana has no statutes which regulate fees paid for services other than the premium. We have not found these types of situations during our examinations to date.</p> <p>We could attempt to employ one of the above-referenced statutes in an effort to take administrative action.</p>
Kansas Kentucky	<p>Not that we are aware of.</p> <p>Exam findings have revealed some abuse in 2008-09 scope with delayed reporting of closing transactions to insurers. In these cases, the agreed corrective action has been the insurer's implementation of real-</p>

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	<p>and <u>Bulletin 2004-05-CF</u> to alert consumers and the industry that mortgage professionals are responsible to ensure that mortgage loan proceeds [including title premium] are disbursed in accordance with applicable loan agreements.</p> <p>a. If so, please provide additional information and/or any appropriate laws or regulations. (see answer to question #4 above)</p>
Minnesota	<p>Yes</p> <p>If so, please provide additional information and/or any appropriate laws or regulations. Minn. Stat. § 60K.43; Minn. Stat. Chapter 72A; Minn. Stat. Chapter 82.</p>
Missouri	<p>Yes. However, Missouri does not regulate closing agents who are not licensed insurance producers or title insurance companies. We are largely uninformed of unlicensed entities' practices.</p>
North Carolina	<p>No</p>
New Mexico	<p>We do not have administrative authority over the closers. However if we are contacted we go directly to the agent to address the matter and to report the results back to us.</p>
Nevada	<p>Yes mostly associated with the title agency going out of business and taking the money. How How.</p>

Title Survey Question #4

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 - a. If so, please

Title Survey Question #5

5. How many defalcations has your state seen from 2005 to the present?

State	Comments
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Title Survey Question #5

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Title Survey Question #6

6. If it is ok for the requestor to contact your state directly regarding this issue, please provide:
 Contact name, contact telephone number :

Michigan	Sherry J Bass-Pohl	517/335-2074	bass-pohls@michigan.gov
Minnesota	Paul Hanson	651-297-5281	paul.hanson@state.mn.us
Missouri	Kathleen Jolly	626 301 0733	Kathleen.jolly@insurance.mo.gov
Nebraska	Matt Holman		Matt.Holman@nebraska.gov
North Carolina	Fred Fuller	(919) 733-	

Title Survey Question #6

6. If it is ok for the requestor to contact your state directly regarding this issue, please provide:
Contact name, contact telephone number :

Utah	Tammy Greenin	801 538-3786	tgreening@utah.gov
Virginia	Brian Gaudiose		Brian.Gaudiose@scc.virginia.gov
Washington	Jim Tompkins		JimT@OIC.WA.GOV
Wyoming	Todd Schildmeier	(307) 777-7402	todd.schildmeier@wyo.gov