

TITLE 13 INSURANCE
CHAPTER 14 TITLE INSURANCE
PART 3 AGREEMENTS BETWEEN TITLE INSURERS AND TITLE INSURANCE AGENTS

13.14.3.1 ISSUING AGENCY: Office of Superintendent of Insurance (“OSI”).
[13.14.3.1 NMAC – Rp, 13.14.3.1 NMAC, 1/1/2021]

13.14.3.2 SCOPE: This rule applies to all title insurers, title insurance agencies, and title insurance agents conducting the business of title insurance in New Mexico.
[13.14.3.2 NMAC – Rp, 13.14.3.2 NMAC, 1/1/2021]

13.14.3.3 STATUTORY AUTHORITY: Sections 59A-2-8, 59A-2-9, 59A-30-4, 59A-30-6, 59A-30-6.1, 59A-30-6.2 and 59A-30-8 NMSA 1978.
[13.14.3.3 NMAC – Rp, 13.14.3.3 NMAC, 1/1/2021]

13.14.3.4 DURATION: Permanent.
[13.14.3.4 NMAC – Rp, 13.14.3.4 NMAC, 1/1/2021]

13.14.3.5 EFFECTIVE DATE: January 1, 2021, unless a later date is cited at the end of a section.
[13.14.3.5 NMAC – Rp, 13.14.3.5 NMAC, 1/1/2021]

13.14.3.6 OBJECTIVE: The purpose of this rule is to establish requirements for agreements between title insurers and title insurance agency and agents.
[13.14.3.6 NMAC – Rp, 13.14.3.6 NMAC, 1/1/2021]

13.14.3.7 DEFINITIONS: See 13.14.1 NMAC.
[13.14.3.7 NMAC – Rp, 13.14.3.7 NMAC, 1/1/2021]

13.14.3.8 AGENCY AGREEMENTS:

A. All agreements and amendments between title insurers and title insurance agencies or agents shall comply with these rules, and shall be filed with OSI within 30 days of execution. All existing agency agreements shall be amended within 60 days of the effective date of any applicable change to these rules. An amendment may be in the form of an addendum to an existing agreement.

B. An agreement between a title insurance agency or agent and a title insurer shall specify that the title insurance agency or agent has no authority to negotiate or settle policy claims.
[13.14.3.8 NMAC – Rp, 13.14.3.12 NMAC, 1/1/2021]

13.14.3.9 PAYMENTS OF PREMIUM AND MAINTENANCE TAXES OR ASSESSMENTS BY TITLE INSURERS: An agreement between a title insurance agency or agent and a title insurer shall require that the title insurer pay all premium taxes or assessments and all maintenance taxes or assessments as the same may come due and payable, and shall require that the title insurer report all premiums received by it directly or by any of its title insurance agencies or agents on a one hundred percent gross basis for the purposes of reporting said taxes and assessments.
[13.14.3.9 NMAC – Rp, 13.14.3.10 NMAC, 1/1/2021]

13.14.3.10 PREMIUM DIVISION WITH TITLE INSURANCE AGENTS – OTHER CHARGES:

A. A title insurance agency or agent or title insurer shall not pay or receive any compensation for title insurance business or for referral of business, other than the division of premiums established in a title rate case. A title insurer shall not reward or otherwise compensate a title insurance agency or agent (or vice versa) directly or indirectly for business other than as established in a title rate case.

B. A title insurance agency or agent shall not be required to contribute or pay any amount to an insurer for reinsurance or otherwise, and any contractual provision to the contrary shall be void and unenforceable.

C. A title insurer may pay on behalf of, or reimburse, a title insurance agency or agent for expenses associated with instruction, lectures or seminars conducted by that title insurer for title insurance agencies or agents, if such instruction, lectures or seminars have been approved in advance by OSI for continuing education credit. A title insurer conducting such instruction, lectures or seminars shall submit to the superintendent for approval, in

advance, an agenda and detailed budget for such instruction, lectures or seminars. Such courses of instruction, lectures or seminars shall be offered by a title insurer to all of its appointed title insurance agents on a non-discriminatory basis.

[13.14.3.10 NMAC – Rp, 13.14.3.11 NMAC, 1/1/2021]

13.14.3.11 ASSUMPTION OF RISK BY A TITLE INSURANCE AGENCY OR AGENT: No agreement between a title insurance agency or agent and a title insurer shall directly or indirectly require a title insurance agency or agent to assume either partial or total liability for an insured risk, except as follows:

A. if a title insurance agency or agent, or any person employed by a title insurance agency, commits gross negligence, fraud, deceit, or theft in connection with a title transaction, and if such act causes loss to the title insurer;

B. if a title insurance agency or agent, or any person employed by a title insurance agency, disregards lawful written instructions of a title insurer or other party to a title transaction, and if such act causes loss to the title insurer; or

C. if the title insurance agency or agent, or any person employed by the agency, shall do or fail to do any act which results in the insurer paying a claim to any person pursuant to a New Mexico closing protection letter issued by the title insurer.

[13.14.3.11 NMAC – Rp, 13.14.3.8 NMAC, 1/1/2021]

13.14.3.12 PROHIBITED CONDUCT: A title insurance agency or agent or title insurer shall not provide, either directly or indirectly, any goods or services to a referrer without receiving fair market value therefor. This includes, but is not limited to, the following activities:

A. making any monetary payment to any producer, unless the payment is for the actual cost of bona fide supplies or services received by the title insurer or title insurance agency or agent;

B. making any in kind payment to any producer or provide any free products or services, including but not limited to postage, postage machines, facsimile machines, computer hardware or software, copy machines, telephones, or office space to any producer;

C. engaging in joint advertising by any means of communication or media that names a specific producer unless the producer pays its share of the advertising cost in direct proportion to its prominence in the advertisement;

D. providing video equipment or any other type of electronic or cyber equipment or services, such as “virtual tours” unless the producer pays at least the actual cost for the equipment or services;

E. providing advertising by any means of communication or media for a producer unless the producer pays at least the actual cost for the advertisement to the title insurer or title insurance agency or agent;

F. sponsoring, co-sponsoring, or providing free door prizes, refreshments or meals at any producer’s open house, tour of open houses, awards banquet, or company party unless a representative of the title insurer or agency is present and educational or marketing materials and signage are on-site for the function; at no time shall the cost of any sponsorship exceed the commensurate advertising benefit of the educational or marketing materials and signage provided;

G. providing free meals to any producer unless a representative of the title insurer or title insurance agency is present, title insurance business is discussed and the meals are not a regular occurrence; a title insurer or title insurance agency or agent shall not provide free recreational activities or entertainment to any producer under any circumstance;

H. entering into any lease or rental agreement for office space with a producer unless:
(1) the lease or rental agreement is for commercially reasonable terms and at least the fair market rental rate of the property; and

(2) the property is physically occupied by at least one bona fide full time employee of the title insurer or title insurance agency if the producer is the lessor or by one bona fide full time employee of the producer if the title insurer or title insurance agency or agent is the lessor; or

I. providing a career continuing education course for producers, unless each producer in attendance pays at least the actual per person cost for the course to the title insurer or title insurance agency or agent.

[13.14.3.12 NMAC – N, 1/1/2021]

13.14.3.13 DUTIES OF TITLE INSURERS WITH RESPECT TO AGENCIES:

A. A title insurer shall not accept title insurance business from an agency unless there is in force a written agreement between the title insurer and the agency.

B. For each agency, the title insurer shall have on file a statement of financial condition. The statement shall include an income statement of title insurance business done during the preceding year and a balance sheet showing the condition of affairs as of the prior December 31. The agency shall certify the statement is true and correct.

C. A title insurer shall, at least annually, conduct a review of the underwriting, claims, and escrow practices of the agency which shall include a review of the title insurance policy form inventory and processing operations. If the agency does not maintain separate financial institution or trust accounts for each title insurer it represents, the title insurer shall verify that the funds held on its behalf are reasonably ascertainable from the books of account and records of the agency.

D. Within 30 days after executing or terminating an agreement with an agency, a title insurer shall provide written notification of the appointment or termination and the reason for the termination to OSI. The notice of appointment of an agency shall be made on a form prescribed or approved by OSI.

E. A title insurer shall maintain an inventory of all title insurance policy forms or title insurance policy numbers allocated to each agency.

F. Before entering into an agreement with an agency, a title insurer shall confirm that the agency has a current and appropriate license to transact title insurance business.

[13.14.3.13 NMAC – N, 1/1/2021]

13.14.3.14 [RESERVED]

[13.14.3.14 NMAC - Rn, 13 NMAC 14.4.14, 5/15/2000; Repealed 1/1/2021]

13.14.3.15 [RESERVED]

[13.14.3.15 NMAC - N, 7/1/2006; Repealed 1/1/2021]

HISTORY OF 13.14.3 NMAC: Pre-NMAC History.

ID 74-1, Article 10, Chapter 58, Rule 2, Regulations for Filing Title Insurance Forms and Rates, 3/7/1974

SCC-85-6, Insurance Department Regulation 30 - Title Insurance, 9/6/1985

SCC-86-1, Insurance Department Regulation 30 - Title Insurance, 5/9/1986

NMAC History.

Re-promulgated a portion of SCC-86-1, Insurance Department Regulation 30 - Title Insurance, as 13 NMAC 14.4, Agency Agreements, filed 10/2/1996

Recompiled 13 NMAC 14.4, Agency Agreements, as 13.14.3 NMAC, Agency Agreements, filed 4/28/2000, amended effective 7/31/2014.

13.14.3 NMAC, Agency Agreements, filed 7/31/2014, amended effective 3/1/2016.

13.14.3 NMAC, Agency Agreements, filed 3/1/2016, amended effective 7/1/2018.

13.14.3 NMAC, Agency Agreements, filed 5/15/2000, was repealed and replaced by 13.14.3 NMAC, Agreements Between Title Insurers And Title Insurance Agents, effective 1/1/2021.

History of Repealed Material.

ID 74-1, Article 10, Chapter 58, Rule 2, Regulations for Filing Title Insurance Forms and Rates - Superseded 9/6/1985

SCC-85-6, Insurance Department Regulation 30 - Title Insurance- Superseded 5/9/1986.