

# STATE OF COLORADO

DEPARTMENT OF REGULATORY AGENCIES

## DIVISION OF INSURANCE

1560 Broadway, Suite 850  
Denver, Colorado 80202



### Bulletin No. B-5.22

#### Retaining of Fees for Services Not Actually Performed by Title Insurance Entities

##### I. Background and Purpose

The purpose of this bulletin is to provide clarification of the Colorado Revised Statutes, specifically, the section that pertains to the retaining of certain fees for services not actually performed.

Bulletins are the Division's interpretations of existing insurance law or general statements of Division policy. Bulletins themselves establish neither binding norms nor finally determine issues or rights.

##### II. Applicability and Scope

This bulletin applies to all title insurance entities licensed to transact the business of title insurance in the State of Colorado.

##### III. Division Position

Section 10-11-108(1)(d), C.R.S. states, in part, that *"A title insurance company or title insurance agent shall not... give or receive or attempt to give or receive any portion or percentage of any charge made or received in connection with the business of title insurance if such charge is not for services actually rendered."*

Some title entities, as part of their schedule of fees on file with the Division, have filed "release processing fees" which include as part of said fees the applicable government recording charges for the recording of a release of deed of trust or other lien with the applicable county authorities. While some transactions require the title entity to record such releases and therefore use the collected monies for such recording, it is not the case with 100% of transactions.

It is the position of the Division that, in those instances that a release of deed of trust or other lien has not been recorded by the entity, and therefore the government recording charge portion of the processing fee has not been used, retaining said portion of the processing fee constitutes receiving a portion of a charge for services not actually performed. In these cases, that portion of the fee which would have been used for recording purposes should be returned to the consumer who was charged the fee.

This interpretation also applies in any other instance where a title entity collects a fee for expenses not actually incurred. This includes instances in which a title entity collects an "overage" in recording fees for those times when final recording charges are not clear at the time of closing, and for "pass-through fees" such as wire fees or courier fees that are collected but not actually incurred as expenses by the entity. When such charges are made, and no expense or only a portion of the expense is incurred by the title entity, those fees, or portions thereof, should be returned to the consumer who paid the fee (as evidenced by the HUD-1 Settlement Statement signed at closing by all parties.)

#### **IV. Additional Division Resources**

##### **For More Information**

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#### **V. History**

- Issued November 7, 2008