

# STATE OF COLORADO

DEPARTMENT OF REGULATORY AGENCIES

## DIVISION OF INSURANCE

1560 Broadway, Suite 850  
Denver, Colorado 80202



### Bulletin No. B-5.24

#### Interest on Fiduciary Funds Held by Title Insurance Entities

##### I. Background and Purpose

The purpose of this bulletin is to provide guidance and clarification of existing insurance laws and regulations and how they pertain to the retaining of interest earned on fiduciary funds by title insurance entities.

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 10-11-102(3.5) defines "closing and settlement services" as "*providing services for the benefit of all necessary parties in connection with the sale, leasing, encumbering, mortgaging, creating a secured interest in and to real property, and the receipt and disbursement of money in connection with any sale, lease, encumbrance, mortgage, or deed of trust.*"

Colorado insurance regulation 3-5-1(7)(H) states in part that "*[n]o title entity shall provide closing and settlement services without receiving written instructions from all necessary parties.*"

Regulation 3-5-1(9)(D) states "*[e]xcept as otherwise consented to in writing by the parties to a transaction establishing the need for fiduciary funds, a title entity or its authorized agent shall not use such fiduciary funds for any purpose other than the purpose or purposes set forth in the written agreement for which the fiduciary funds were deposited with the title entity.*"

Examples of fiduciary funds that are held by title insurance entities include but are not limited to title insurance premiums, earnest money deposits, loan proceeds, seller's proceeds, homeowner's association dues, and any other monies that are held by the entity for the benefit of another.

It is the position of the Division that, in order to comply with the requirements set forth in regulation 3-5-1, title entities should obtain written instruction as to the use, handling, or disposition of any interest that may be earned on any funds held in a fiduciary capacity. Such instruction shall be signed by all necessary parties (i.e. those for whom said monies are being held), and shall be obtained prior to the performance of the service.

This position also extends to the deposit or use of fiduciary funds in investment accounts, sweep accounts, as compensating or bank offset balances, or "*any purpose other than the purpose or purposes set forth in the written agreement for which the fiduciary funds were deposited with the title entity.*"

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

##### **A. For More Information**

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##### **V. History**

- Issued December 16, 2008