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## **LTAC Summary of Colorado Revised Statutes on Title Insurance 2007**

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**Refer to CRS Agent Site referenced on the LTAC website for more information.**

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**10-11-101. Short title.**

This article shall be known and may be cited as the "Title Insurance Code of Colorado".

**10-11-102. Definitions.**

As used in this article, unless the context otherwise requires:

(1) "Affiliated business arrangement" means an arrangement in which:

(a) (I) A settlement producer or an associate of such producer has either an affiliate relationship with, or a direct beneficial ownership interest of more than one percent in, a title insurance company or title insurance agent; or

(II) A title insurance company or a title insurance agent who has either an affiliate relationship with, or a direct beneficial ownership interest of more than one percent in a settlement producer; and

(b) (I) Either the settlement producer or the agent of the settlement producer directly or indirectly refers settlement service business to that title insurance company or title insurance agent or affirmatively influences the selection of that title insurance company or title insurance agent; or

(II) Either the title insurance company or the title insurance agent directly or indirectly refers settlement services business to a settlement producer or associate or affirmatively influences the selection of the settlement producer or associate.

(1.5) "Alien title insurance company" means a title insurance company incorporated or organized under the laws of a foreign nation, or of any province or territory thereof, not included under the definition of a foreign title insurance company.

(2) "Applicants for insurance" includes all those, whether or not a prospective insured, who from time to time apply to a title insurance company, or to its agent, for title insurance and who at the time of such application are not agents for a title insurance company.

(2.5) "Associate" means a person who has one or more of the following relationships with a person in a position to refer settlement service business:

(a) A spouse, parent, or child of such person;

(b) A corporation or business entity that controls, is controlled by, or is under common control with such person;

(c) An employer, officer, director, partner, franchiser, or franchisee of such person; or

(d) Anyone who has an agreement, arrangement, or understanding with such person, the purpose or substantial effect of which is to enable the person in a position to refer settlement service business to benefit financially from referrals of such business.

(3) The "business of title insurance" means the making or proposing to make, as insurer, guarantor, or surety, of any contract or policy of title insurance; or the transacting or proposing to transact, as insurer, guarantor, or surety, any phase of title insurance, including solicitation, negotiation preliminary to execution, execution of a contract of title insurance, and transacting matters subsequent to the execution of the contract and arising out of it, including reinsurance, and the performance of closing and settlement services by a title insurance company or title insurance agent in conjunction with the issuance of any contract or policy of title insurance.

(3.5) "Closing and settlement services" means 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.

(3.7) "Gap coverage" means insuring, guaranteeing, or indemnifying owners of real property, or others interested therein, against loss or damage suffered by reason of matters appearing of record in the office of the clerk and recorder subsequent to the date of issuance of a title insurance commitment and prior to the recording of closing documents for the real property concerned.

(4) "Net retained liability" means the total liability retained by a title insurance company under any policy or contract of insurance, or under a single insurance risk as defined in or computed in accordance with subsection (7) of this section, after the purchase of reinsurance.

(5) "Premium" for title insurance is the amount charged by a title insurance company, agent for a title insurance company, or either of them to an insured or an applicant for insurance for the assumption by the title insurance company of the risk created by the issuance of the title insurance policy, including the cost of doing business and a reasonable profit, but excluding service charge, if any.

(6) "Service charge" is the amount charged by a title insurance company, agent for a title insurance company, or either of them to an insured or an applicant for insurance to cover the cost of procuring and examining evidence of title.

(6.5) (a) "Settlement producer" means a person who is in a position to refer business that is incident to or a part of a settlement service. "Settlement producer" includes, but is not limited to, a person who:

(I) Buys or sells an interest in real property;

(II) Lends or borrows moneys with an interest in real property as security;

(III) Acts as an agent, representative, attorney, or employee of a person who:

(A) Buys or sells an interest in real property; or

(B) Lends or borrows moneys with an interest in real estate as security;

(IV) Is an associate of a person described in this subsection (6.5).

(b) Nothing in this subsection (6.5) shall be construed to include a title insurance company or a title insurance agent.

(6.7) "Settlement service" means any service provided in connection with a real estate settlement. "Settlement services" include, but are not limited to, the following:

(a) Title searches;

(b) Title examinations;

(c) The provision of title certificates;

(d) Title insurance;

(e) Services rendered by an attorney;

(f) The preparation of title documents;

(g) Property surveys;

(h) The rendering of credit reports or appraisals;

(i) Pest and fungus inspections;

(j) Services rendered by a real estate broker;

(k) Services rendered by a real estate appraiser;

(l) Home inspection services;

(m) The origination of a loan;

(n) The taking of a loan application;

(o) Processing of a loan;

(p) Underwriting and funding of a loan;

(q) Escrow handling services;

(r) The handling of the processing; and

(s) Closing of settlement.

(7) "Single insurance risk" means the insured amount of any policy or contract of title insurance issued by a title insurance company unless two or more policies or contracts are simultaneously issued on different estates in identical real property, in which event, it means the sum of the insured amounts of all such policies or contracts. Any such policy or contract that insures a mortgage interest that is excepted in a fee or leasehold policy or contract, and which does not exceed the insured amount of such fee or leasehold policy or contract, shall be excluded in computing the amount of a single insurance risk.

(8) "Title insurance" means insuring, guaranteeing, or indemnifying owners of real property or others interested therein against loss or damage suffered by reason of liens or encumbrances upon, defects in, or the unmarketability of the title to said property.

(9) "Title insurance agent" means a person authorized by a title insurance company to solicit insurance or to collect premiums or to issue or countersign policies in its behalf.

(10) "Title insurance company" means any domestic company organized under the provisions of this article for the purpose of insuring titles to real property; any title insurance company organized under the laws of another state or foreign nation and licensed to insure titles to real estate within this state; and any domestic, foreign, or alien company having the power and authorized to insure titles to real estate within this state on or before July 1, 1969, and which meets the requirements of this article.

#### **10-11-103. Compliance with article required.**

On and after July 1, 1969, no company shall underwrite or issue a policy of title insurance or otherwise engage in the business of title insurance in this state unless authorized by the provisions of this article to transact such a business.

#### **10-11-104. Corporate form required.**

Any domestic title insurance company formed after July 1, 1969, shall be organized as a stock corporation as provided in section 10-3-101.

**10-11-105. Financial requirements prior to this article.**

(1) Every domestic title insurance company which on July 1, 1969, has the capital required by law and whose reserve fund required by law has been approved by the state bank commissioner shall have until July 1 in the tenth year after July 1, 1969, to comply with the financial requirements of this article, but the capital and reserve fund of each such title insurance company shall at no time be less than that required by law immediately prior to July 1, 1969.

(2) The reserve fund required by law immediately prior to July 1, 1969, for each domestic title insurance company engaged in the business of title insurance shall be supervised by the commissioner on and after July 1, 1969. As soon as practicable, the state bank commissioner shall furnish to the commissioner a list of all such title insurance companies and an inventory of securities and deposits approved by said bank commissioner for the reserve fund of each such company, and shall deliver to the commissioner all such securities and deposits then on deposit with the state bank commissioner and all safe deposit box keys, deposit receipts, certificates of deposit, and other evidences or means of control thereof to the commissioner. Every bank, savings and loan association, or other escrow or depository agent is authorized to accept the substitution of the commissioner for the state bank commissioner on any certificate of deposit or deposit receipt or any authority to enter a safe deposit box with reference to any reserve fund of a title insurance company. Every such bank, savings and loan association, or other escrow or depository agent and the state bank commissioner shall be held harmless from any liability as a result of such substitution and shall take such action as may be necessary or advisable to effect such substitution.

**10-11-106. Determination of insurability required.**

(1) No policy or contract of title insurance shall be written unless and until the title insurance company has caused to be conducted a reasonable examination of the title and has caused to be made a determination of insurability of title in accordance with sound underwriting practices for title insurance companies. Evidence thereof shall be preserved and retained in the files of the title insurance company or its agent for a period of not less than seven years after the policy or contract of title insurance has been issued. In lieu of retaining the original copy, the title insurance company, or the agent of the title insurance company, may, in the regular course of business, establish a system whereby all or part of these writings are recorded, copied, or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic, or other process which accurately reproduces or forms a durable medium for reproducing the original. This section shall not apply to either a company assuming no primary liability in a contract of reinsurance or a company acting as a coinsurer if one of the other coinsuring companies has complied with this section.

(2) A title insurance company shall not be obligated to make a written disclosure to its prospective insureds prior to the issuance of a title insurance policy of the following

documents if a reasonable examination of title referred to in subsection (1) of this section reveals a recorded document that:

- (a) Is a spurious lien or spurious document as defined in section 38-35-201, C.R.S.;
- (b) Is not, according to sound underwriting practices for title insurance companies, an impairment of record concerning the property to be insured; or
- (c) Although it may purport to do so, does not encumber the property to be insured.

**10-11-107. Powers.**

(1) Every title insurance company has the following powers:

- (a) To do the business defined in section 10-11-102 (3) and (8);
- (b) To own, manage, and maintain sets of abstract books and to make, compile, and sell abstracts of title to real estate;
- (c) To acquire by purchase or otherwise, and to hold, sell, mortgage, or otherwise dispose of, real estate and personal property, or any interest therein, either within or without the state of Colorado and to loan or borrow money upon such real estate or personal property.

**10-11-108. Prohibitions.**

(1) A title insurance company or title insurance agent shall not:

- (a) Engage in the business of guaranteeing the payment of the principal or the interest of bonds, notes, or other obligations;
- (b) Transact, underwrite, or issue any kind of insurance other than title insurance;
- (c) Give or receive or attempt to give or receive remuneration in any form pursuant to any agreement or understanding, oral or otherwise, for the referral of title insurance business;
- (d) 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. For purposes of this article, "services actually rendered" shall include but not be limited to a reasonable examination of a title, including instruments of record, and a determination of insurability of such title in accordance with sound underwriting practices; "services actually rendered" shall not include the mere referral of title insurance business.

(2) Nothing in this article, or in any other provision of law governing the insurance industry, shall be construed to prohibit:

(a) Compensation by a title insurance company of an attorney who is licensed to practice in Colorado for services actually rendered in connection with a real estate transaction, regardless of whether such attorney represents a client in such real estate transaction. Compensation of the attorney for services actually rendered shall not include the payment of an hourly fee paid by the client combined with a payment from the title insurance company for the same service; except that prior to issuing any title insurance commitment, such attorney shall disclose to any party represented by such attorney in the transaction for which the commitment shall be issued that such attorney may be compensated for the issuance of such title insurance commitment.

(b) Payment to any person of a bona fide salary or compensation for payment of goods and facilities actually furnished or for services actually rendered.

(3) Any party to a transaction which is subject to this section shall have a right of action for any actual loss or damage resulting from any violation of this section.

**10-11-109. Unearned premium reserve.**

(1) In lieu of those reserves required for other insurance companies, every domestic title insurance company, and every foreign or alien title insurance company which under the state of domicile is not required to maintain a substantially equivalent unearned premium reserve, shall, in addition to other reserves, establish and maintain a reserve to be known as the "unearned premium reserve" for title insurance, which shall, at all times and for all purposes, constitute the unearned portions of premiums due or received and shall be charged as a reserve liability of such title insurance company in determining its financial condition.

(2) The unearned premium reserve shall be retained and held by such title insurance company for the protection of the policyholders' interest in policies which have not expired. Except upon liquidation, dissolution, or insolvency, assets equal to the amount of such reserve shall not be subject to distribution among depositors or other creditors or stockholders of such title insurance company until all claims of policyholders or holders of other title insurance contracts or agreements of such title insurance company have been paid in full and all liability on the policies or other title insurance contracts or agreements, whether contingent or actual, has been discharged or lawfully reinsured. Income from the investment of the amount of such reserve shall be the unrestricted property of the title insurance company.

**10-11-110. Amount of unearned premium reserve - release.**

(1) The unearned premium reserve of every title insurance company required to maintain such reserves in this state shall consist of:

(a) The amount of the unearned premium reserve held as of July 1, 1969, pursuant to law; and

(b) The amount of all additions required to be made to such reserve by this section, less the withdrawals therefrom as permitted by this section.

(2) On and after July 1, 1969, every title insurance company shall add to its unearned premium reserve, in respect to each title insurance policy, leasehold policy, contract, or reinsurance agreement issued by it, a sum equal to one dollar for each such policy, contract, or agreement, plus fifteen cents for each one thousand dollars face amount of net retained liability on each such policy, contract, or reinsurance agreement, as defined in section 10-11-102 (4), or the amount reinsured by it, and shall separately record the aggregate amounts so set aside and reserved in respect to such policies, contracts, or agreements written in each calendar year.

(3) The amounts set aside as additions to the unearned premium reserve shall be deducted from income in determining net profits of any title insurance company.

(4) For the purposes of determining the amounts of the unearned premium reserve that may be withdrawn pursuant to subsection (5) of this section, all policies, contracts of title insurance, or reinsurance agreements of title insurance shall be considered as dated July 1 in the year of issue.

(5) On and before December 31, 2000, the aggregate of the amounts set aside in unearned premium reserve in any calendar year pursuant to subsection (2) of this section shall be released from said reserve and restored to income pursuant to the following formula: One-tenth of said aggregate sum on July 1 of each of the five years next succeeding the year of addition to the reserve and one-thirtieth of said aggregate sum on July 1 of each succeeding year thereafter until the entire sum has been so released and restored to income. On and after January 1, 2001, the aggregate of the amounts set aside in unearned premium reserve in any calendar year pursuant to subsection (2) of this section shall be released from said reserve and restored to income in accordance with the formula prescribed by nationally recognized insurance statutory accounting principles.

(6) (Deleted by amendment, L. 2001, p. 286, § 11, effective March 30, 2001.)

(7) If substantially the entire outstanding liability under all policies, contracts of title insurance, and reinsurance agreements of any such title insurance company shall be reinsured, the value of the consideration received by a reinsuring title insurance company authorized to transact the business of title insurance in this state shall constitute, in its

entirety, unearned portions of original premiums and shall be added to its unearned premium reserve, and shall be deemed, for recovery purposes, to have been provided for liabilities assumed during the year of such reinsurance. The amount of such addition to the unearned premium reserve of such assuming title insurance company shall be not less than two-thirds of the amount of the unearned premium reserve required to be maintained by the ceding title insurance company at the time of such reinsurance.

**10-11-111. Reserve for unpaid losses and loss expense.**

(1) Each title insurance company, in addition to other reserves, shall at all times establish and maintain reserves against unpaid losses, and against loss expense, and shall calculate such reserves by making a careful estimate in each case of the loss and loss expense likely to be incurred by reason of every claim presented, pursuant to notice from or on behalf of the policyholder, of a title defect in or lien or adverse claim against the title insured that may result in a loss or cause expense to be incurred for the proper disposition of the claim. The sums of the items so estimated shall be the total amounts of the reserves against unpaid losses and loss expenses of such title insurance company.

(2) The amounts so estimated may be revised from time to time as circumstances warrant but shall be redetermined at least once each year.

(3) The amounts set aside in such reserves in any year shall be deducted in determining the net profits for such year of any title insurance company.

**10-11-112. Net retained liability.**

The net retained liability of any title insurance company under any single insurance risk, as defined in section 10-11-102 (4) and (7), shall not exceed fifty percent of the net amount remaining after deducting from the sum of its capital, surplus, unearned premium reserve, and voluntary reserves the value, if any, assigned in such summation to its title plant, all as shown in its most recent report on file with the commissioner. The same limitation shall apply to any secondary risk assumed by means of reinsurance or to any policy of excess coinsurance; except that, whenever the primary retained liability of a ceding company equals or exceeds ten percent of the single insurance risk liability, the net retained or assumed liability limit of this section may be increased by an additional two hundred fifty thousand dollars, but in no event above one hundred percent of the net amount remaining after deducting from the sum of its capital and surplus the value, if any, assigned in such summation to its title plant, all as shown by its most recent report on file with the commissioner. Nothing in this section is intended to limit the amount of a single insurance risk, as defined in section 10-11-102 (7), that may be written by a title insurance company; but it shall cede to one or more other title reinsurers, on or before the effective date of such writing, such portion of the said risk as shall be sufficient to bring its net retained liability thereunder within the limits prescribed in this section; and each such cession of risk shall be within the limits of this section as applied to the sum of the

capital, surplus, unearned premium reserve, and voluntary reserves, less the value, if any, assigned in such summation to the title plants of the reinsuring company, as shown by its most recent report on file with the supervisory agency in the state of its domicile.

#### **10-11-113. Power to reinsure.**

Any title insurance company may cede reinsurance of all or any part of its liability under one or more of its policies, contracts, or reinsurance agreements of title insurance to any reinsurer which meets or exceeds the financial requirements of a title insurance company to do business in this state and is authorized to engage in the business of reinsurance of title insurance in this or any other state; but no larger amount of reinsurance shall be ceded to any reinsurer on a single policy or contract of title insurance, or on any single insurance risk, as defined in section 10-11-102 (7), than such reinsurer would be permitted to retain if authorized to engage in the business of title insurance in this state. Any title insurance company may also reinsure policies of title insurance issued by other insurance companies on risks located in this state or elsewhere. Any domestic title insurance company or any foreign or alien title insurance company authorized to do business in this state shall pay to this state taxes required on all business taxable within this state and reinsured, as provided in this section, with any foreign or alien company not authorized to do business within this state. Issuance of contracts of reinsurance by a reinsurer not authorized to engage in the business of title insurance in this state but authorized to engage in the business of title insurance or in the business of reinsurance of title insurance in any of the United States, which contracts reinsure policies of title insurance issued by a title insurance company authorized to engage in the business of title insurance in this state on real property located in this state, shall not of itself constitute the doing of business in this state by such reinsurer.

#### **10-11-114. Legal investments and admitted assets.**

(1) Title insurance companies shall comply with the investment requirements for other insurance companies under the laws of this state but, in addition, may invest in a title plant. Such title plant shall be considered an admitted asset as provided by nationally recognized insurance statutory accounting principles. The real estate in which the title plant is housed shall be considered an investment under section 10-3-218. Subject to the limitations of this section and with the approval of the commissioner, a title insurance company may enter into agreements with one or more other title insurance companies authorized to do business in this state whereby such companies shall participate in the ownership, management, and control of a title plant to serve the needs of all such companies, or such companies may hold stock of a corporation owning and operating a title plant for such purposes.

(2) A title insurance company shall include as an admitted asset accounts receivable relating to gross premiums, less agent retention, in the course of collection. Accounts receivable that are more than ninety days past due from the date of notification of the issuance of the policy shall not be included as an admitted asset.

**10-11-115. Prior investments.**

Any investment of a title insurance company lawfully acquired before July 1, 1969, and which but for this section would be considered ineligible as an investment on such date shall be disposed of within five years from such date. The commissioner, upon application and proof that forced sale of any such investment would be contrary to the best interests of the title insurance company and its policyholders, may extend the period for sale or disposal of such investment for a further reasonable time, in no event to exceed three years.

**10-11-116. Title insurance agents licensed.**

(1) (a) Title insurance agents shall be licensed in the manner provided for insurance producers in part 4 of article 2 of this title, except as otherwise provided in this section.

(b) Full-time employees of a corporate contractual agent of a title insurance company authorized by such company or such contractual agent to issue or countersign binders or policies in behalf of such title insurance company shall be so licensed.

(c) A license shall be issued to an attorney-at-law licensed to practice in this state if a title insurance company notifies the commissioner in writing of the name and address of each such attorney it desires to appoint as its agent and upon payment of the fee required by section 10-3-207.

(2) No individual, partnership, corporation, or other legal entity contractually authorized by a title insurance company as its agent to issue or countersign binders or policies on its behalf, other than an attorney otherwise qualified under subsection (1) (c) of this section, shall be licensed unless, in addition to all other requirements of this article and of articles 1 to 3 of this title, the agent possesses actual paid-in cash capital, or, if an individual, has a net worth, of at least ten thousand dollars.

(3) Title insurance agents possessing a title plant, as described in section 10-11-114, may satisfy the requirements of subsection (2) of this section by submitting to the commissioner of insurance, in a form acceptable to the commissioner, the written affidavit of a certified public accountant stating that the agent's actual investment in the title plant equals or exceeds the applicable amount set forth in subsection (2) of this section, or, alternatively, that the aggregate of the agent's paid-in cash capital or net worth, as applicable, and the agent's actual investment in the title plant equals or exceeds the applicable amount set forth in subsection (2) of this section.

(4) A licensed contractual agent of a title insurance company shall preserve and retain its closing and settlement services and escrow files for a period of not less than seven years after the closing, or completion, of said files. In lieu of retaining the original files, a licensed contractual agent of a title insurance company may, in its regular course of business, establish a system whereby the files are recorded, copied, or reproduced by any photographic, microfilm, or other process which accurately reproduces or forms a durable medium for reproduction of the original files. Upon cessation of business by a contractual agent of a title insurance company the files shall be deposited with the division of insurance or with a title insurance company or licensed contractual agent of a title insurance company authorized by the division of insurance.

**10-11-117. Title insurance agents - certain names prohibited.**

On and after July 1, 1969, no agent for a title insurance company shall adopt a firm name containing the words "title insurance", "title guaranty", or "title guarantee", unless such words are followed by the words "agent" or "agency". The words "agent" or "agency" must be in the same size and type as the words preceding them. This section shall not apply to any title insurance company acting as agent for another title insurance company.

**10-11-118. Title insurance.**

(1) Title insurance rates and fees shall be regulated in the manner provided in part 4 of article 4 of this title, except as otherwise provided in this section.

(2) (a) Every title insurance company and title insurance agent shall have on file in the company's or agent's principal office within the state:

(I) The schedule of rates, fees, and every amendment thereto, including the effective date of the schedule amendment;

(II) A statement of compliance by an officer of the title insurance company or the title insurance agent that to the best of the officer's knowledge each rate or fee in use complies with Colorado law; and

(III) Information or supporting documentation that demonstrates compliance with section 10-4-403.

(b) Prior to the effective date of any new or amended rate or fee, every title insurance company and title insurance agent shall file with the commissioner such new or amended rate or fee. Such filing shall not include the information or supporting documentation described in paragraph (a) of this subsection (2). Every title insurance company and title insurance agent shall make available upon request to the commissioner the statement of compliance and all information or supporting documentation referred to in paragraph (a) of this subsection (2).

(c) No title insurance company or title insurance agent shall use any rate or fee in the business of title insurance prior to its effective date, and no rate or fee increase or decrease shall apply to title policies or services that have been contracted for prior to such effective date. All such rates or fees shall be readily available to the public in each office of the title insurance company or title insurance agent in the county to which said rates or fees apply.

(3) (Deleted by amendment, L. 2000, p. 468, § 8, effective August 2, 2000.)

**10-11-119. Laws applicable.**

In addition to the provisions of this article, the laws governing insurance companies, except as they are inconsistent with the provisions of this article, shall apply to the business of title insurance and to title insurance companies.

**10-11-120. Corporate existence preserved.**

The repeal of article 12 of chapter 31, C.R.S. 1963, shall not affect the corporate existence of corporations organized under the provisions of said article 12 if such corporations are on July 1, 1969, engaged in the business of title insurance or title insurance agents in this state. Such corporations in all other respects shall be subject to the provisions of this article and shall file with the commissioner a copy of its articles of incorporation and all amendments thereto certified by the secretary of state.

**10-11-121. Application of article - other laws applicable.**

The provisions of this article shall apply to all title insurance companies, title insurance rating organizations, title insurance agents, applicants for title insurance, policyholders, and persons and business entities deemed to be engaged in the business of title insurance. In addition to the provisions of this article, the laws governing insurance companies, except as they are inconsistent with the provisions or purposes of this article, shall apply to such persons and entities.

**10-11-122. Title commitments.**

(1) Every title insurance agent or title insurance company shall provide, along with each title commitment issued for the sale of residential real property as defined in section 39-1-102 (14.5), C.R.S., a statement disclosing the following information:

(a) That the subject real property may be located in a special taxing district;

(b) That a certificate of taxes due listing each taxing jurisdiction shall be obtained from the county treasurer or the county treasurer's authorized agent;

(c) That information regarding special districts and the boundaries of such districts may be obtained from the board of county commissioners, the county clerk and recorder, or the county assessor.

(2) Failure of a title insurance agent or a title insurance company to provide the statement required by subsection (1) of this section shall subject such agent or company to the penalty provisions of section 10-3-111 but shall not affect or invalidate any provisions of the commitment for title insurance.

(3) Before issuing any title insurance policy, unless the proposed insured provides written instructions to the contrary, a title insurance agent or title insurance company shall obtain a certificate of taxes due or other equivalent documentation from the county treasurer or the county treasurer's authorized agent.

### **10-11-123. Notification of severed mineral estates.**

(1) For purposes of this section:

(a) "Mineral estate" means a mineral interest in real property.

(b) "Severed" means that the surface owner does not own all or any part of the mineral estate.

(c) "Surface estate" means an interest in real property that does not include the full mineral estate as shown by recorded documents that impart constructive notice in the office of the clerk and recorder of the county in which the real property is situated.

(d) "Surface owner" means the owner of the surface estate and any purchaser with rights under a contract to purchase all or part of the surface estate.

(2) A title insurance agent or title insurance company shall provide, as part of each title commitment for the issuance of an owner's title insurance policy, the following written statement when it is determined that a mineral estate has been severed from the surface estate:

(a) That there is recorded evidence that a mineral estate has been severed, leased, or otherwise conveyed from the surface estate and that there is a substantial likelihood that a third party holds some or all interest in oil, gas, other minerals, or geothermal energy in the property; and

(b) That such mineral estate may include the right to enter and use the property without the surface owner's permission.

(3) In determining compliance with this section, a title insurance agent or title insurance company may rely on recorded documents that impart constructive notice in the office of

the clerk and recorder of the county in which the real property is situated and shall not be liable for any errors or omissions in such records.

(4) A title insurance company or title insurance agent may rely on any document purporting to sever mineral interests to act as notice of such severance when such document is recorded in the office of the county clerk and recorder in the county in which the real property is situated.

(5) A title insurance agent or title insurance company shall be deemed to be in compliance with this section when it relies on any document purporting to sever mineral interests or to act as notice of such severance when such document is recorded in the office of the county clerk and recorder of the county in which the real property is situated. No title insurance agent or title insurance company shall be liable for obligations above, or for an amount in excess of, those stated in the owner's policy of title insurance issued pursuant to the commitment for failure to comply with the provision of subsection (2) of this section.

**10-11-124. Affiliated business arrangements - rules - investigative information shared with the division of real estate.**

(1) (a) An affiliated business arrangement is permitted where the person referring business to the affiliated business arrangement receives payment only in the form of a return on an investment and where it does not violate the provisions of section 10-11-108 (1).

(b) A title insurance company or a title insurance agent making a referral as part of an affiliated business arrangement shall disclose the affiliation in accordance with the federal "Real Estate Settlement Procedures Act", 12 U.S.C. sec. 2601 et seq.

(c) Neither a title insurance company nor a title insurance agent shall require the use of an affiliated business arrangement or a particular settlement producer as a condition of obtaining title insurance services from the company or agent. For the purposes of this paragraph (c), "require the use" shall have the same meaning as "required use" in 24 CFR 3500.2 (b).

(2) The commissioner may promulgate rules concerning the creation and conduct of an affiliated business arrangement, including, but not limited to, rules defining what constitutes a sham affiliated business arrangement. Nothing in this subsection (2) shall be construed to increase a fee or create a licensure program for affiliated business arrangements. The commissioner shall adopt the rules, policies, or guidelines issued by the United States department of housing and urban development concerning the federal "Real Estate Settlement Procedures Act", 12 U.S.C. sec. 2601 et seq. Rules adopted by the commissioner shall be at least as stringent as the federal rules and shall ensure that consumers are adequately informed about affiliated business arrangements. The commissioner shall consult with the real estate commission pursuant to section 12-61-113.2 (5), C.R.S., concerning rules the real estate commission may promulgate

concerning affiliated business arrangements. Neither the rules promulgated by the commissioner nor the real estate commission may create a conflicting regulatory burden on an affiliated business arrangement.

(3) The division may share information gathered during an investigation of an affiliated business arrangement with the division of real estate.

**10-11-125. Fees, salaries, compensation, or other payments.**

(1) Nothing in section 10-11-124 or 10-11-126 shall be construed to prohibit payment of a fee to:

(a) An attorney for services actually rendered;

(b) A title insurance company to its duly appointed agent for services actually performed in the issuance of a policy of title insurance; or

(c) A lender to its duly appointed agent for services actually performed in the making of a loan.

(2) Nothing in section 10-11-124 or 10-11-126 shall be construed to prohibit payment to any person of:

(a) A bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed; or

(b) A fee pursuant to cooperative brokerage and referral arrangements or agreements between real estate brokers.

(3) It shall not be a violation of section 10-11-124:

(a) For an affiliated business arrangement to require a buyer, borrower, or seller to pay for the services of any attorney, credit reporting agency, or real estate appraiser chosen by the lender to represent the lender's interest in a real estate transaction; or

(b) For an affiliated business arrangement where an attorney or law firm represents a client in a real estate transaction and issues or arranges for the issuance of a policy of title insurance in the transaction directly as agent or through a separate corporate title insurance agency that may be established by that attorney or law firm and operated as an adjunct to his or her law practice.

**10-11-126. Affiliated business arrangements - enforcement - penalties.**

(1) The commissioner shall have the same remedies available to him or her as those available to the administrator of the department of housing and urban development in the federal "Real Estate Settlement Procedures Act", 12 U.S.C. sec. 2607.

(2) In addition to any other remedies available to the commissioner pursuant to this title, after notice and a hearing pursuant to section 24-4-105, C.R.S., the commissioner may assess a penalty for a violation of this article or a rule promulgated under this article. The penalty shall be the amount of remuneration improperly paid and shall be paid to the person aggrieved by the violation or apportioned among multiple aggrieved persons as determined by the commissioner.

(3) No person shall be liable for a violation of section 10-11-124 if such person proves by a preponderance of the evidence that such violation was not intentional and resulted from a bona fide error notwithstanding maintenance of procedures that are reasonably adopted to avoid such error.