

Kansas Administrative Regulations

Kansas Department of Insurance

Article 3.—Fire and Casualty Insurance

40-3-42. Title insurance; unfair inducements; prohibited acts.

(a) As used in this regulation:

(1) "Title entity" means a title insurance company, title insurance agent, title insurance agency or any other organization directly involved in the sale, underwriting, or servicing of title insurance.

(2) "Producer of title business" means any natural person, firm, association, organization, partnership, business trust, corporation, or other legal entity engaged in this state in the trade, business, occupation, or profession of:

(A) buying or selling interests in real property;

(B) making loans secured by interests in real property; or

(C) acting as broker, agent, representative, or attorney of natural persons or other legal entities that buy or sell interests in real property or that lend money with such interests as security.

(b) The following acts constitute rebates or unlawful inducements in the marketing of title insurance on property located in this state:

(1) The disbursement, on behalf of a customer or prospective customer, of funds prior to the actual deposit thereof with the escrow or closing agent;

(2) disbursement of escrow funds before the conditions of the escrow have been met;

(3) making a charge for any title commitment which does not have a reasonable relation to the cost of production of the commitment or is less than the minimum fee or charge for the type of policy applied for, as set forth in the agent's filed schedule of fees and charges. This provision does not apply where a title commitment is furnished in good faith in furtherance of a bona fide sale, purchase or loan transaction which for good reason is not consummated;

(4) paying a producer of title business to make an inspection of property;

(5) any transaction in which any person receives, or is to receive, securities of the title entity at prices below the normal market price, or bonds or debentures which guarantee a higher than normal interest rate, whether or not the consummation of the transaction is directly or indirectly related to the number of escrows or title orders coming to the title entity through the efforts of such person;

(6) charging a subdivision discount rate which is not applicable in the particular transaction because the volume required to qualify for the discount includes ineligible lots or parcels;

(7) paying for, or offering to pay for, the cancellation fee, the fee for the preliminary title report or other fee on behalf of any producer of title business before or after inducing such producer of title business to cancel an order with another title entity;

(8) giving, receiving or guaranteeing, or offering to give, receive or guarantee, either directly or indirectly, any loan with any producer of title business, regardless of the terms of the note or guarantee;

(9) guaranteeing, or offering to guarantee, the performance of escrow services or any other undertaking by any producer of title business;

(10) providing, or offering to provide, either directly or indirectly, a "compensating balance" or deposit in a lending institution either for the express or implied purpose of influencing the extension of credit by such lending institution to any producer of title business, or for the express or implied purpose of influencing the placement or channeling of title insurance business by such lending institution;

(11) paying for, or offering to pay for, the fees or charges of an outside professional including but not limited to an attorney, engineer, appraiser, or surveyor whose services are required by any producer of title business to structure or complete a particular transaction;

(12) providing, or offering to provide, without reasonable charge non-title services including but not limited to escrow services, computerized bookkeeping, forms management, computer programming, or any similar benefit to any producer of title business;

(13) furnishing, or offering to furnish, without reasonable charge all or any part of the time or productive effort of any employee of the title entity including but not limited to

office manager, escrow officer, secretary, clerk or messenger to any producer of title business. However, messenger service normally provided by a title entity in the ordinary course of its title insurance business shall not constitute a violation of this provision;

(14) paying for, or offering to pay for, all or any part of the salary of an employee of any producer of title business;

(15) paying for, or offering to pay for, the salary or any part of the salary of a relative of any producer of title business which payment is in excess of the reasonable value of work performed by such relative on behalf of the title entity;

(16) paying, or offering to pay, any fee to any producer of title business for making an inspection or appraisal of property unless the fee bears a reasonable relationship to the services performed;

(17) paying for, or offering to pay for, services by any producer of title business which services are required to be performed by the producer of title business or title agency in his or her capacity as a real estate or mortgage broker or salesman or agent including but not limited to the drafting of documents that are required for the initiation of an escrow;

(18) furnishing or offering to furnish, paying for or offering to pay for, furniture, office supplies, telephones, facsimile machines, computer and other business equipment or automobile to any producer of title business, or paying for, or offering to pay for, any portion of the cost of renting, leasing, operating or maintaining any of the aforementioned items;

(19) paying for, furnishing, or waiving, or offering to pay for, furnish, or waive, all or any part of the rent for space occupied by any producer of title business;

(20) renting, or offering to rent space:

(A) from any producer of title business that does not serve a necessary purpose;

(B) at a rental rate which is excessive when compared with rental rates for comparable space in the geographic area; or

(C) paying, or offering to pay, rent based in whole or in part on the volume of business generated by any producer of title business;

(21) furnishing or offering to furnish, paying for or offering to pay for any economic opportunity, gift, gratuity, special discount, favor, hospitality, or service to any producer

of title business having an aggregate value of \$25 or more in any calendar year where a purpose of the donor is to influence any producer of title business in the placement or channeling of title insurance business. Hospitality in the form of incidental food and beverages are presumed not to be given to influence such producer of title business in the placement or channeling of title insurance business except when a particular transaction is conditioned thereon;

(22) paying for, or offering to pay for, money, prizes or other things of value for any producer of title business in any kind of a contest or promotional endeavor. This prohibition applies whether or not the offer or payment of a benefit relates to the number of title orders placed or escrows opened with a title entity or group of such entities;

(23) paying for, or offering to pay for, any advertising for the benefit of the title entity through any advertising medium, the end result of which is the substantial subsidization of a product, service or publication used by, or published or printed by or for the benefit of, any producer of title business, building or financing businesses or any association or group of such persons. In determining whether there has been a violation of this subsection "substantial subsidization" will exist whenever 50 percent or more of the advertising revenue or printing costs, whichever is less, of any pamphlet, program, announcement, register, directory, index, book, brochure, periodical, newsletter, bulletin, information sheet or printed matter of any kind intended for distribution or circulation is paid for by one or more title entities;

(24) paying for, or furnishing, or offering to pay for or furnish, any advertising effort made in the name of, for, or on behalf of, any producer of title business through any advertising medium, whether or not the advertising is used, or is intended to be used, in connection with the promotion, sale or encumbrance of real property;

(25) paying for or furnishing, or offering to pay for or furnish, any business form to any producer of title business other than a form regularly used in the conduct of the title entity's business;

(26) giving of trading stamps, cash redemption coupons or similar items to any producer of title business;

(27) advancing or paying into escrow, or offering to advance or pay into escrow, any of the title entity funds;

(28) buying from or selling to, or exchanging with, or offering to buy from or sell to, or exchange with, any producer of title business, shares of stock, promissory notes or other securities in any title entity or any other business concern owned by, or affiliated with, a title entity, regardless of the price or relative value except for purchases or exchanges made through a general public offering. This prohibition also applies to the furnishing, or offer to furnish, legal or other professional services by any title entity to any producer of title business or group of persons to assist such producer(s) of title business in the formation of a title entity. The burden will be placed on any existing title entity that invests in a title entity formed by one or more of such producer(s) of title business to show that such investment does not represent a benefit coming within the prohibition of this subsection; or

(29) charging, contracting or offering to contract with any producer of title business to perform services for which the title entity is making a charge either directly or indirectly.

(Authorized by K.S.A. 40-103 and 40-2404a; implementing K.S.A. 40-2404(14) as amended by L. 1989, Ch. 139, Sec. 1; effective Oct. 23, 1989.)

***** Authenticated Kansas Administrative Regulation *****