

WASHINGTON REGULATIONS ON TITLE INSURANCE MARKETING

Effective March 20, 2009
(Updated November 2011)

This document is provided by the Washington Land Title Association as a service to its members and is intended to be a summary of the Washington Administrative Code provisions concerning marketing of title insurance services (WAC 284-29-200 to 284-29-265). While the WLTA believes this information to be an accurate summary of the rules, it does not address every nuance of the rules nor has it been adopted or approved by the Office of the Insurance Commissioner. Any questions regarding the rules should be addressed to your company's legal counsel or to the Office of the Insurance Commissioner (titleinsurance@oic.wa.gov).

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INTRODUCTION

For many years title companies in Washington had to abide by a single, simple regulation concerning how they market themselves to real estate agents, brokers, lenders, builders and others who are in a position to refer title insurance and escrow business. This regulation simply provided that title companies could not give "things of value" in excess of \$25 to a producer over a 12-month period. While this rule had the advantage of simplicity, it had the disadvantage of being vague and open to interpretation.

In 2008 the Washington Legislature passed a new law giving the Office of the Insurance Commissioner ("OIC") authority to create new rules governing title company marketing activity. The OIC spent over 6 months meeting with consumers, producers and title company representatives to craft new regulations. A detailed, but not completely comprehensive analysis and summary of these regulations is set forth in these pages.

The most important thing to remember about the new regulations is that **unless something is expressly permitted** by the regulations, it is **prohibited**. Therefore, if you are uncertain whether you can do something, you must check the rules to see if your planned marketing activity is specifically mentioned as an approved activity. If it is not mentioned as an approved activity, you may not engage in the activity. If you have any questions regarding the rules, you should contact the OIC for guidance (titleinsurance@oic.wa.gov). The OIC's website also includes a "frequently asked questions" page where the OIC provides its thoughts on several marketing related questions.

In the new rules, the term "producer" is repeatedly used. Under the law, a "producer" is anyone who is in a position to refer title insurance business to a title company. This includes real estate agents, real estate brokers, builders, developers, lenders, and mortgage brokers. So even if a person has not referred business to you in the past, if they possibly could refer business to you in the future, then these rules govern your contacts with them.

SECTION 1: ADVANCING RECORDING FEES (284-29-255(5))

Title companies can advance recording fees if both: (a) the title company is either handling the escrow or issuing the title policy for that transaction, and (b) the title company is promptly reimbursed.

NOTE: No definition of “promptly” is given in the rules, but 5 business days is probably acceptable (the OIC’s frequently asked questions page says the OIC believes one month is not “prompt”).

SECTION 2: ADVERTISING

2.1 Advertising in Trade Association Publications (284-29-215(1)).

Title companies may advertise in a trade association publication provided:

- The publication is an official publication of the association; and
- All title companies have an equal right to advertise in the publication; and
- The title company doesn’t pay more than what other members of the association pay for similar advertising; and
- The advertising is strictly self-promotional (e.g., promotes only the title company).

NOTE: An advertisement in a trade association publication will count towards the limit of three contributions to all trade associations during the calendar year. See Section 17.6

Example 1: A title company purchases a full page ad in the county board of realtors’ newsletter. The ad includes the title company logo and says “XYZ Title Company congratulates Smith Realtors on being the number 1 real estate company in the county.” This advertisement violates the rules as it promotes Smith Realtors as well as XYZ Title Company.

Example 2: A title company places a purely self-promotional ad in the building industry association annual Real Estate Summary. The ad cost \$250, which is the same amount charged by the association to all advertisers. This advertisement is permitted, but counts as one of the three contributions the title

company can make to trade associations that calendar year (see Section 17.6).

Example 3: A title company publishes an advertisement in a local newspaper promoting the title company. A small portion of the ad consists of the picture of a local real estate agent, the agent's name and company name, and a testimonial from the agent about the great service she receives from the title company. This type of advertising is not permitted as the OIC (see the OIC's Frequently Asked Questions page on their website) has stated that testimonials from producers are not allowed.

2.2 Co-Advertising with Producers (284-29-215(2))

A title company may not co-advertise in any manner with a producer nor may a title company advertise in any manner that would promote a producer. This includes, but is not limited to placing the title company name or logo on flyer boxes, for sale signs, a producer's promotional material, a producer's newsletter or a producer's website.

Example 1: A title company publishes an advertisement in a local newspaper promoting the title company. A small portion of the ad consists of the picture of a local real estate agent, the agent's name and company name, and a testimonial from the agent about the great service she receives from the title company. This type of advertising is not permitted as the OIC has stated that testimonials from producers are not allowed (see the OIC's Frequently Asked Questions page on their website).

Example 2: A title company may not send out an email "blast" that includes flyers for homes that are for sale through various producers (see the OIC's Frequently Asked Questions page on their website).

Example 3: A title company may not produce a joint flyer with a short sale negotiating company that does not refer business to the title company but is owned by producers (see the OIC's Frequently Asked Questions page on their website).

Example 4: A title company and a local real estate firm co-sponsor a car wash benefitting a local charity. This is a violation of the co-advertising rules (see the OIC's Frequently Asked Questions page on their website).

2.3 Title Company Self-Promotional Advertising (284-29-215(4))

Title companies may do advertising that is purely self-promotional in newspapers, magazines, non-producer web-sites, television and radio.

Example 1: A title company may place an advertisement with its logo and contact information in a new homes magazine provided the fee for the ad is the normal fee paid by others for similar ad space and the title company pays the publisher directly for the ad. The advertisement can not be placed within advertising of a producer and the title company can not direct that the advertisement be placed on the same page as a producer's advertisement.

2.4 Title Company Websites

Websites maintained by title companies should generally be considered advertisements and are subject to the same rules as other forms of advertising. The OIC has said that a title company website can include contact information for homeowners' associations and can include links to producer trade association websites (such as a local board or realtors' site). However, the OIC has said these websites can not include marketing templates for producers to pull off and utilize for their own purposes. (See the OIC's Frequently Asked Questions page on their website). See also Section 6.4 for rules relating to providing access to recorded documents via title company websites.

SECTION 3: BROKER OPEN HOUSES (284-29-230(2))

A title company may not host or in any way contribute to an open house of a producer.

Example 1: A real estate agent asks a title company to attend an open house the agent is having for one of his listings. The title company provides refreshments to those attending the open house and gets an opportunity to market to other real estate agents. This is prohibited.

Example 2: A real estate broker is opening a new office and is hosting a party to celebrate. The broker asks a title company to help sponsor the event and contribute

funds towards food and beverages. Any such contribution by the title company is prohibited.

SECTION 4: CANCELLATION FEES (284-29-260(10))

If a title company is required to charge a cancellation fee under the terms of its rate manual, the cancellation fee must be charged AND COLLECTED!

For residential property, the cancellation fee must be collected within the earlier to occur of:

- (1) 180 days from the date of commitment, or
- (2) 60 days from
 - (a) the date the commitment is cancelled;
 - (b) the date the title company should reasonably know the transaction was canceled; or
 - (c) the date the title company should reasonably know the transaction was insured by another title company.

For commercial property, the cancellation fee must be collected within 60 days of:

- (1) the date the commitment was cancelled;
- (2) the date the title company should reasonably know the transaction was canceled; or
- (3) the date the title company should reasonably know the transaction was insured by another title company.

NOTE: Many, if not most, underwriters have language in their rate manuals permitting the waiver of cancellation fees. For these companies, collection of a cancellation fee is not required under the new rules because the new rule requires collection of cancellation fees only if the rate manual requires charging for a cancellation fee.

NOTE: Sending out invoices for cancellation fees suggests the cancellation fee is required under your rate manual. Therefore, if your rate manual does not require the collection of cancellation fees, you should not send invoices for cancellation fees.

SECTION 5: CHARITABLE CONTRIBUTIONS (284-29-250(2) & (3))

Title companies can make donations of time and money to charities if the donation is made directly to the charity (even if the charity is set up by a producer) and the donation isn't directly or indirectly in exchange for the referral of business.

- Example 1: Real estate agent X is running a marathon in Cleveland, Ohio for a charity and is collecting donations. The title company may make a donation if the check is made payable to the charity.
- Example 2: Real estate agent X says he is running a marathon in Hawaii for a charity and is collecting donations. Part of the donation is used to pay X's travel costs and the balance is used for charitable purposes. The title company may not make the donation because part of the funds are being used to pay for X's travel.
- Example 3: Real estate agent X is running a marathon for charity. X tells the title company that the larger the donation the more incentive X will have to bring business to the title company. The title company may not make the donation because the title company knows X views the donation as an incentive to refer business to the title company.
- Example 4: A lender customer is organizing a work party for Habitat for Humanity. A title company employee may donate their time to this event.
- Example 5: A title company and a local real estate firm co-sponsor a car wash benefitting a local charity. This is a violation of the co-advertising rules (see the OIC's Frequently Asked Questions page on their website).

SECTION 6: CUSTOMER SERVICE INFORMATION

6.1 Listing Packages (284-29-210(1)-(3))

A title company can give away for free ONE COPY of each of the following items to a Producer:

- Latest deed of record (if the latest deed is a quit claim deed, the title company may also provide the latest warranty deed); and
- Deeds of trust/real estate contracts/mortgages that reasonably appear to be active (not satisfied); and
- A map showing the parcel's location and/or dimensions; and
- Active CC&Rs and amendments thereto; and
- Tax information; and
- Property characteristics such as number of rooms, square footage, year built, etc.

NOTE: The following information may NOT be included in a listing package: market value or comparable sales; demographic information, information on schools, parks or other amenities in the area; and any statements regarding ownership or the status of title or encumbrances.

NOTE: The listing package can NOT include any marketing information on behalf of a producer.

6.2 Copies of Recorded Documents to Insureds (284-29-210(6))

A title company can give to insureds or proposed insureds, without charge, copies of all documents listed as exceptions on the policy or commitment.

6.3 Copies of Other Recorded Documents to Producers (284-29-210(4))

A title company can give to a producer, without charge, ONE COPY of a SINGLE DOCUMENT (a document not included in the listing package) from the title company's plant for a particular parcel provided all the costs incurred in obtaining and delivering the document are no more than \$10.

NOTE: A title company may not give more than one document per parcel nor may a title company give a producer one document each for parcels in the same area. In other words, the title company can't provide for free copies of all vesting deeds in a subdivision (but the title company can charge for the copies, see Section 6.5).

6.4 Website Access to Recorded Documents (284-29-210(7))

A title company may give the general public (including producers) free access to recorded documents in a county through a title company website provided:

- The title company owns or leases a title plant for that county; and
- The county government does not make the recorded documents available to the public on the county website.

6.5 Information That Can be Provided for a Fee (284-29-210(5))

A title company may provide producers with other real property information, including, but not limited to, foreclosure reports, farm packages, home books, comparable sales data, etc.) provided:

- The title company charges an amount at least equal to the actual cost of producing and delivering the information; and
- The title company actually COLLECTS the charge.

NOTE: It is a violation to provide this information and not actually collect the necessary fee. The OIC will not accept good faith efforts to collect – they require actual collection. As a result, no such information should be provided without receiving payment at or before the time you provide the information.

NOTE: Determining the actual cost of producing and delivering the information can be a very subjective and difficult task. Title plant membership costs, software subscription fees, employee time, office space lease rates, etc. all should be considered when setting an appropriate charge. Each office should justify, in writing, its determination of the various fees charged for this information. This justification should be dated and maintained by management.

NOTE: Each office should maintain a log of all such information requests indicating the type of information provided, the person it was provided to, the amount charged, and the date and manner of payment.

SECTION 7: EDUCATIONAL SEMINARS

7.1 Seminars Provided by Title Companies on Title Insurance, Escrow, or Title to Real Property Topics (284-29-235(1)).

Title companies can provide seminars to producers for free if:

- The topics are limited to title insurance, title to real property and escrow; and
- Refreshments are limited to \$10 per person; and
- Any handouts are either: (1) items promoting the title company (pens, pads, cups, etc. with the company logo) that cost less than \$5 each; or (2) are directly related to the topic of the seminar (an outline of what was taught, etc.)

NOTE: There is some uncertainty as to what kinds of seminars qualify as being on title, escrow or title to real property topics. Any seminars that are to be provided free of charge should be cleared, in advance, with company management or the OIC.

NOTE: If refreshments are served (even if coffee and water) you should keep your receipts together with a sign in sheet to identify the producer attendees so that you can establish no more than \$10 per producer attendee was spent.

NOTE: The \$10 limit is based on actual attendance by producers, so if you are going to spend more than a few dollars per person on refreshments you have to be careful not to overestimate the attendance.

7.2 Seminars Provided by Title Companies on Topics Other than Title Insurance Escrow or Title to Real Property (284-29-235(4))

A title company may provide seminars to producers on topics other than title, escrow and title to real property provided:

- The seminar is open to all producers; and
- Producers pay a fee. The fee charged must be the fair market value of the seminar. In addition, the title company must receive enough fees from all producers to cover all of its costs in promoting and holding the seminar.

NOTE: Because of the extreme difficulty in determining the fair market value of a seminar, and because it is difficult to ensure that you will have enough producers in attendance to cover all your costs of promoting and holding the seminar, holding seminars on topics that are not on title, escrow or title to real property topics is extremely risky and should be done only after consulting management.

NOTE: It is important to collect admission fees from producers before allowing them entrance to the seminar. Letting them attend a non-free course without charge is providing them an illegal inducement.

NOTE: For each non-free seminar held the title company should keep detailed records on the cost of hosting and promoting the seminar and should maintain a ledger showing which producers attended and how much was received in payment.

Example 1: A title company holds a seminar on effective marketing techniques for real estate agents. A variety of marketing seminars have been conducted in the area in the last several months. Those held by local marketing consultants typically cost \$50 for a 3 hour seminar. A nationally known marketing expert recently held a 6-hour seminar in town and charged \$495. The title company charges \$25 for its 2-hour seminar and 20 producers attend. The title company spent \$300 to hire the speaker, \$100 for room rental, \$100 for food and beverages, \$50 in printing charges for promotional flyers, and an undetermined amount of employee time in promoting the event. This seminar violated the rules. The total fees received for the seminar were \$500 which was less than the \$550+ spent to hold and promote the seminar. Also, it's unlikely the \$25 charge was the fair market value given that the hourly charge (\$12.50) is less than both the local seminar and the national speaker.

Example 2: A title company holds a seminar on the effective use of email. The company had done extensive research to determine that similar seminars in the area cost \$25. The total of all costs the title company will incur in promoting and hosting the seminar is \$200. 8 producers attend the event – 7 pay with cash and the other producer says he will mail in payment. No payment is ever received from this producer despite several invoices and friendly reminders. The title company is in violation because the one producer was provided the seminar for free and because the amount actually received ($7 \times \$25 = \175) is less than the \$200 total cost of the seminar.

7.3 Title Company Employees as Speakers at Seminars Hosted by Others (284-29-235(2)).

Title company employees may speak at seminars hosted by others provided:

- If the title company providing the speaker is a title agent, the speaker provided must be an employee of the agent or an employee of the agent's underwriter; and
- The topic discussed must either be related to title insurance, escrow or real property law; and
- Any handouts are either: (1) items promoting the title company (pens, pads, cups, etc. with the company logo) that are no more than \$5 in cost; or (2) are directly related to the topic of the seminar (an outline of what was taught, etc.)

NOTE: When title company employees speak at a third party seminar they can talk on the subject of real property law, which is broader than the "title to real property" limitation in effect when title companies host seminars for producers.

Example 1: A local real estate agent is organizing a seminar for first time homebuyers and asks a title agent to speak on the escrow process. A local appraiser, home inspector, mortgage broker and the real estate agent will also present at the seminar. As long as the title agent's speaker is an employee of the agent or the agent's underwriter, this is permitted.

7.4 Title Company Sponsorship of Trade Association Education Seminars (284-29-220)

Title companies may sponsor trade association education seminars, but if they do, this sponsorship counts as one of the three annual trade association contributions (see Section 17.6). If the title company is merely asked to speak at, but not sponsor, a trade association seminar, then Section 7.3 applies.

SECTION 8: FOOD

8.1 Meals at Restaurants and Other Public Locations (284-29-230(1), (3) & (4))

A title company may take producers out to a restaurant, bar or other public location for a meal or beverages provided:

- A title company employee is present at the meal (receipts should list the employee and the producers who were at the meal); and
- There is a “substantive and substantial” discussion of title insurance during or immediately before or after the meal; and
- No more than 4 representatives of the same producer are taken out to the same meal (a producer’s spouse or guest count toward the limit of 4); and
- You can’t spend more than \$100 per producer per calendar year (meals of a producer’s spouse or guest count toward the producer’s \$100 limit); and
- Invitations to the event are not based on whether business is referred or how much business is referred to the title company

NOTE: All costs associated with the meal must be considered when applying the \$100 calendar year limit. This includes food, beverages, tax, tip, room rental, travel costs (including mileage), etc.

NOTE: When determining how much of the total meal cost should be attributed to each attending producer’s \$100 annual limit, you may take the total cost of the meal and divide it among all of the attendees. You no longer need to determine the cost of each person’s meal and proportionately apply the tax and tip.

Example 1: A title company employee takes producer X, producer X’s husband, producer X’s mother and Producer Y out to dinner. The total cost of all food, beverages, tax and tip is \$150. Producer X is allocated 3/5ths of the total cost (\$90) and producer Y is allocated 1/5th of the cost (\$30). The title company may only spend \$10 in business meals on producer X and \$70 on producer Y the rest of the calendar year.

Example 2: A title company representative takes 3 employees (and the employee’s spouses) of a local mortgage broker out to dinner. The total cost of all food, beverages, tax and tip is \$160. This is a violation as only 4 representatives of the same producer can be

taken out at one time and here 6 representatives of the same producer (each employee and the employee's spouse counts as a representative of the mortgage broker producer) were taken to dinner.

Example 3: A title company hosts a cocktail party at a local hotel. 6 different producers and 5 title company employees attend. \$450 is spent on wine and food. The meeting room rental is \$550. A jazz band is hired to perform at the event at the total cost of \$500. One of the title company employees flew in from California at a cost of \$290. Two of the title company employees stayed in hotel rooms following the function at a total cost of \$360. Three of the title company employees drove to the function and will seek mileage reimbursement for a total of \$83.90. Therefore, the total cost of the function is \$2,233.90. This cost is divided among the 11 attendees for a cost of \$203.08 per person. This function violates the rules because the cost allocated to the producers exceeds the \$100 calendar year limit. In addition, the function was not limited to 4 producers.

8.2 Bringing Food to Producers A title company may bring food to a producer's office only if the food item costs no more than \$5 and the food item includes the name or logo of the title company.

Example 1: A title company may bring into a producer's office lollipops with the title company logo on the lollipop.

Example 2: A title company may not bring donuts into a producer's office unless the donuts have the company logo or name imprinted on them.

Example 3: A title company buys a Snickers bar and puts a sticker with their company logo on the bar or places it in a bag with the title company logo on the bag. This is a violation. There are companies that will wrap candy bars and other items in wrappers specifically made for companies containing the company name and logo. Distributing this type of candy is permitted.

SECTION 9: GIFTS (284-29-225)

Title companies may not give “thank you” gifts to buyers, sellers or producers (see the OIC’s Frequently Asked Questions page of their website). However, title companies can give pens, note pads, mugs, etc. (but NOT money or gift cards) to producers provided:

- The cost of each item to the title company is \$5 or less; and
- The item has the title company logo or name printed on it; and
- The item does not include the name, logo or anything else promoting a producer;
- The item is being given as a promotional item and is not being given in return for referring business.

Example 1: A title company purchases 100 title company branded calculators at a cost of \$450. Taxes are \$35 and shipping is \$25 (total of \$510). The title company can not give the calculators out to customers because the cost of each calculator to the title company is \$5.10.

Example 2: A title company employee purchases \$4 Starbucks gift cards and adds a sticker with the title company logo and phone number. The title company can not give the cards to producers because gift cards are prohibited.

Example 3: A title company contracts with a bakery to have 50 cupcakes made with the title company logo printed on the frosting. The cost of 50 cupcakes is \$100 (\$2 each). The title company then delivers the cupcakes to various real estate offices. This is permitted.

Example 4: A title company gives real estate agent X a \$4 mug (imprinted with the title company logo) on January 10th. On January 20th, the title company gives agent X a \$3 fountain pen (with the title company logo). On January 30th, the title company gives agent X a \$4 calendar with the title company logo. These gifts are all allowed. The \$5 limit is per gift and is not an annual limit.

Example 5: A title company gives a real estate agent 50 pencils costing a total of \$4.50. The pencils have the title company logo and the name and address of the real estate agent. This gift is prohibited because gifts from title companies to producers can not contain any information about the producer or the producer's employer which might promote or benefit the producer or the producer's employer.

Example 6: A title company gives a producer 25 file folders with the title company logo, costing a total of \$2.50. The title company gives another 25 file folders the next week and the following week as well. This may not be permitted as the OIC has warned that title companies can not abuse the rule by becoming a producers' "Office Depot" by supplying them with all of their miscellaneous office supplies.

SECTION 10: MEMORIAL AND MEDICAL DONATIONS FOR PRODUCERS AND PRODUCER'S IMMEDIATE FAMILY (284-29-250(1))

Title companies may give no more than \$200 in food, flowers, memorial donations or medical fund donations in the event of the death or serious medical condition of a producer or a producer's immediate family member. No other type of item may be provided. The term "immediate family" is limited to spouses, domestic partners, parents, children and siblings.

Example 1: If the mother of a real estate agent dies, the title company may send flowers costing no more than \$200 (including taxes and delivery charges) to the agent.

Example 2: If the husband of a real estate agent dies, the title company can pay up to \$200 to have food delivered to the agent's home or can donate up to \$200 to a charity as a memorial donation.

Example 3: If the father-in-law of a real estate agent dies, the title company can not make any donation. The father-in-law is not considered immediate family.

Example 4: A mortgage broker's son is diagnosed with cancer and a fund is being established to help pay for

medical expenses. A title company may donate up to \$200 to the fund.

Example 5: A mortgage broker's son is diagnosed with cancer and a fund is being established to help pay for medical expenses. A title company may donate up to \$150 to the fund and may pay \$50 for a flower bouquet (but total expenditures may not exceed \$200).

SECTION 11: OFFICE SPACE OCCUPIED BY TITLE COMPANIES

11.1 Occupying Space Owned or Leased by a Producer (284-29-245):

A title company may only lease or sublease space from a producer if:

- There is a written lease agreement; and
- Only money is paid (no bartering of services); and
- The lease and the rent paid is in no way affected by the volume of referrals; and
- If the title company shares employees or equipment with the producer, the title company doesn't pay more than its fair share of the cost; and
- The space is occupied by a title company employee at least 30 hours per week and is open to the public during normal business hours (unless you vacate the space entirely for business reasons); and
- The title company pays fair market rent.

NOTE: Determining a fair split of costs for shared equipment or employees can be very difficult and the OIC is very suspicious of these arrangements. As a result, these arrangements should be avoided.

NOTE: Before signing the lease you should have a broker or appraiser provide you with a written opinion as to the cost of similar space in the area and these materials should be kept in your lease file in the event of an OIC audit.

11.2 Use of Title Company Space by Producers (Other Than Trade Associations) (284-29-255(2))

Title companies may permit producers to use their office space only if fair market rental is charged. A fee must be charged even for temporary use, such as an hour meeting.

NOTE: Before allowing the producer to use your office you should obtain information on what it would cost the producer to rent equivalent space for an equivalent period of time and that information should be kept in your files.

Example 1: A local real estate broker wants to hold a one-hour meeting in a title company's conference room. No offices in the area rent out conference rooms but a local hotel has meeting rooms that can be rented for \$100 per hour with a three hour minimum. The title company should charge the broker at least \$100 for the use of their conference room.

11.3 Use of Title Company Space by Trade Associations (284-29-255(3))

A title company may allow trade associations to use its office for meetings and other purposes free of charge up to 4 times per calendar year.

Example 1: A title company allows the local board of realtors to use its conference room for its quarterly meetings. The title company also allows the local building industry association to use its conference room for its annual meeting. This exceeds the limit of 4 times per calendar year that the title company can allow trade associations to use their space free of charge. The building industry association must pay the fair rental value of the conference room.

SECTION 12: OPEN HOUSES BY TITLE COMPANIES (284-29-230(5))

A title company can hold a party or "open house" at its office twice a year provided:

- The location of the party is space owned or leased by the title company and regularly used for its title insurance business; and
- The event only promotes the title company; and
- The party must be open to all producers; and
- The title company doesn't spend more than \$15 per producer guest expected to attend (note title company employees who attend can be counted when doing this calculation); and
- All costs of the event are included when considering the \$15 limit.

NOTE: The 2 open house per year limit applies on a county by county basis. A title company's King County branch can hold two open houses in their Seattle offices and the title company's Snohomish County branch can hold two open houses in their Everett offices, but if King County only does one open house, Snohomish can't do three.

NOTE: To comply with recordkeeping requirements, the office manager should put something in writing in their files before the event stating how many producer guests are expected. The food/beverage ordering documents and receipts should be kept as well to verify the number of producer attendees that were expected.

NOTE: The title company cannot invite specific producers unless all are invited. The best practice is to avoid specific invitations and instead publicize the event as open to all producers.

Example 1: A title company hosts an open house at its office and spends \$350 on food, beverages, decorations, music, etc. It was anticipated that 20 producers would attend and 15 title company employees would attend. This open house is compliant the cost per anticipated producer guest was \$10 (\$350/35).

Example 2: A title company holds an open house in its office in June and only spends \$10 per anticipated producer guest. In December, the company holds a party in its office and \$20 per anticipated producer guest is spent. This is a violation. Unused funds from one party can not be used for a later function.

Example 3: A title company's King County office holds open houses in February and June at its SeaTac office. The company may not hold an open house in its Bellevue office (also King County) in the same calendar year.

Example 4: A title company holds an open house at its office to honor the local building industry association president who is retiring. This is prohibited as the open house must be entirely self-promotional for the title company.

Example 5: A title company plans to hold an open house and, based on prior attendance at similar events and word of mouth RSVPs, expects 50 producer guests and 10 title company employees to attend. The invoices reflect that food and beverages for approximately 60 people was ordered (\$600 worth). The open house ends up falling on the night of the 7th game of the World Series, and the Mariners are playing the Dodgers. Only 5 producers and 10 title company employees attend the event. This is not a violation because the amount spent divided by the number of expected producer guests (\$600/60) is only \$10.

Example 6: A title company hosts at a country club a retirement party for a long-time employee and specific producer clients are invited. This is not compliant because it is providing food and beverages off site in a non-business meal environment. The party could be compliant if no food or beverages were provided. It could also be compliant with food if ALL producers were invited, it was held at the title company's offices, and the other rules for a title company open house are satisfied.

SECTION 13: PRODUCER HOSTED EVENTS (WHEN THE PRODUCER IS NOT A TRADE ASSOCIATION) (284-29-255(4))

Title company employees can attend meetings and activities of a producer if:

- The title company employee pays no more than the normal entry fee/registration fee/meal charge paid by producers; and
- The employee must actually attend the event (unless an emergency prevents attendance.)

Example 1: The county board of realtors is having its monthly lunch meeting at a local restaurant. The charge to all attendees (real estate agents, title company employees, appraisers, inspectors, etc.) is \$10. The title company can pay to have an employee attend so long as the employee actually attends or an emergency prevents their attendance.

SECTION 14: PROVIDING NON-TITLE AND ESCROW SERVICES TO PRODUCERS (284-29-255)

Title companies may provide non title/escrow services (short sale consultation, bookkeeping, computer programming) to producers if the title company charges (and receives) an amount equal to the higher of (a) the total of all costs incurred in performing the service, and (b) the fair market value of the service.

NOTE: Given the difficulty of determining the fair market value of these services and in calculating all the possible costs incurred in providing these services, providing non-title/escrow services is a risky practice. A log should be maintained to track what types of services were provided, to whom they were provided, what price was charged, and what payment was received for the services.

NOTE: You must actually receive payment at least equal to the cost providing the service. Merely invoicing is not sufficient. Therefore, all such services should be paid for by the producer in advance.

Example 1: A title company does short sale consultation services for an additional fee, but only charges the fee if the transaction closes. This is a violation as services were provided and the rules require that the fee be collected (this was the subject of an OIC enforcement action).

SECTION 15: POLITICAL ACTION COMMITTEE DONATIONS (284-29-240)

Title companies are permitted by state insurance regulations to make donations to registered political action committees (“PACs”). However, corporations are prohibited from making donations to federal PACs. You should consult with company management before contributing to a PAC.

SECTION 16: REFERRAL FEES

The OIC has taken the position that any referral fees are prohibited, whether the referral fee is between two different title agents or between a title underwriter and an agent. The OIC believes the only compensation that is permissible is the split of the premium between the underwriter and the agent under their underwriting/agency agreement.

Example 1: Title company X has a regular customer with a transaction in a county title company X does not do business in. If title company X refers the transaction to title company Y, title company Y

may not pay a referral fee and title company X cannot receive a referral fee (see the OIC's Frequently Asked Questions page on their website).

Example 2: Title company provides web-based transaction management services to real estate agents and the agents pay a fee for these services. For each transaction the real estate agent brings to the title company, the agent is given a credit against the transaction management fees they would otherwise have to pay. This is prohibited as a referral fee whether or not the title company controls the transaction management company (see the OIC's Frequently Asked Questions page on their website).

SECTION 17 TRADE ASSOCIATIONS

17.1 Committee Memberships (284-29-220(1))

Title companies can donate employee time to serve on a trade association committee. This service is NOT subject to the additional limits on trade association relationships set forth in Section 17.6 below.

17.2 Attendance at Trade Association Events (284-29-220(3))

Title companies may pay to have their employees and their employees' guests (one guest per employee) attend a trade association event if:

- The employee and guest actually attend (unless an emergency prevents them from attending); and
- The guest of the employee is not a producer (unless the producer is related by blood to the employee or the guest and employee are married or domestic partners); and
- The fee charged the title company employee is the same charged to other members of the association.

NOTE: Attendance at trade association events is NOT subject to the additional limits on trade association relationships set forth in Section 17.6 below. In other words, attendance at a trade association luncheon does not count toward the three annual contributions a title company can make to trade associations.

Example 1: The county realtor's association is having its monthly membership lunch at Applebee's. Two

title company employees attend and their meal is paid for by the title company. This is permitted.

Example 2: The local realtor's association is holding its annual golf tournament. Green fees for realtor members are \$65 and green fees for associate members are \$85. A title company may not participate because the fee for their attendance at the event is higher than for other members of the association.

Example 3: A title company employee is a member of a local realtors association. The association is having a "pot luck" lunch and the title company employee is asked to bring an item to share. The employee may bring an item so long as their contribution to the event is similar to the contributions made by others (see the OIC's Frequently Asked Questions page on their website).

17.3 Advertising in Trade Association Publications.

This is permitted under certain circumstances (see Section 2.1). However, advertising in a trade association publication counts towards one of the three contributions per calendar year a title company can make to a trade association (see Section 17.6 below)

17.4 Donations to, or Sponsorship of, Trade Association Events (284-29-220(2)).

A title company may sponsor a trade association event or donate items (door prizes, flower arrangements, etc.) to a trade association event provided:

- The event is open to all members of the association; and
- The event is an official event of the association; and
- The association asks for equal donations from all members and associate members; and
- Things donated by the title company can not be used to benefit a particular producer unless the producer is chosen through a random process; and
- The amount of the sponsorship or donation doesn't exceed \$1,000

NOTE: Donations to and/or sponsorships of trade association events counts towards one of the three contributions per calendar year a title company can make to a trade association (see Section 17.6 below).

Example 1: A county board of realtors asks all the title companies in the county to contribute \$1,000 to sponsor the association's annual holiday dinner. The title company may not contribute unless the association also solicited \$1,000 donations from all of its members, not just title company members.

Example 2: A title company is asked by the local builder's association to donate \$500 to be used to purchase a weekend getaway package which will be given away at the builder's annual dinner. The association asked all of its members to make this donation. The package is to be awarded to the builder deemed by the association to have contributed the most to the local community in the last year. This donation is prohibited because the donation is not being given away randomly.

17.5 Sponsorship of Trade Association Educational Seminars (284-29-220(5)(a)(iii) and 284-29-235(3))

Title companies can sponsor a trade association education seminar. However, this sponsorship counts towards one of the three contributions per calendar year a title company can make to a trade association (see Section 17.6 below).

17.6 Additional Limits on Advertisements in Trade Association Publications, Donations to or Sponsorships of Trade Association Events and Sponsorship of a Trade Association Educational Seminar

- A title company can only do 3 trade association advertisements/sponsorships/donations per calendar year total (not 3 for each trade association).
- A title company can only spend up to \$1,000 per advertisement/sponsorship/donation.
- If the title company spends less than \$1,000 on a particular advertisement/sponsorship/donation, they can't use the unused portion for another advertisement/sponsorship/donation.

- Each title company that has its own title plant for a county gets to make the 3 \$1,000 advertisements/sponsorships/donations for trade associations based in that county. So Smith Title Company - Seattle can donate to three associations whose members are primarily in King County, and Smith Title Company – Bellingham can donate to three associations whose members are primarily based in Whatcom County. But if Smith Title Company – Seattle does three advertisements/sponsorships/donations the Bellevue office can't make any (because Bellevue is also in King County).

A donation to a STATEWIDE trade association counts against EVERY COUNTY! Therefore, if your company has offices in multiple counties, you should either refrain from contributions to state-wide trade associations or make sure your offices in other counties are aware of your contribution and haven't already reached their limit for the year.

NOTE: Offices must keep track of their advertisements/sponsorships/donations to trade associations.

Example 1: A title company has 2 offices in Pierce County and 1 office in Kitsap County. In calendar year 2009 the office in Kitsap office did a \$500 advertisement in the County building association newsletter, a \$750 sponsorship of the county realtor education seminar, and made a \$250 donation to the state mortgage brokers' association convention. The Pierce office has donated a \$350 raffle item to the Pierce County realtor's association for their annual dinner and did a \$400 advertisement in the Pierce County mortgage broker's magazine. The Pierce office can make no further donations/sponsorships/advertisements to trade associations in 2009 because the Kitsap office's donation to the state mortgage broker's association counts against both the Kitsap and the Pierce office's limit of 3 per calendar year.