

**RULES
OF
TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE
INSURANCE DIVISION**

**CHAPTER 0780-1-12
TITLE INSURANCE COMPANIES AND THEIR AGENTS**

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0780-1-12-.01 DEFINITIONS

- (1) All words and phrases used herein which are defined in T.C.A. §56-35-102 shall have the meaning set forth therein.
- (2) “All inclusive rate” means the aggregate consideration paid, or to be paid to a title insurance company, a title insurance agency, a title insurance agent, an approved attorney for a title insurance company, or any combination thereof in conjunction with the issuance of such company’s commitment, binder or policy of title insurance for those functions embraced by the definition of “risk rate” in T.C.A., §56-35-102(a)(8), and for those matters such as abstracting, record search and the examination or determination of insurability in conjunction with the issuance of such commitment, binder or policy in accordance with T.C.A., §56-35-129 and other matters related to assumption of a title insurance risk.
- (3) “Abstract of title” means a history of title to real property or an interest therein for a given period of time consisting of a listing, summary, copy or some combination thereof of documents or matters affecting said title and imparting constructive notice under the laws.
- (4) “Title plant” means a set of records in which an entry has been made of documents or matters imparting constructive notice under the law of matters affecting title to real property or any interest therein or encumbrance thereon, which has been filed or recorded in the jurisdiction for which such title plant is maintained, and may also include maps and back title files.
- (5) “Approved attorney” means an attorney at law admitted to practice in this state who is not an agent or employee of the title insurance company and whose certification as to status of title such title insurance company is willing to accept as the basis for issuance of its title insurance policy.

Authority: T.C.A. §§56-35-102, 56-35-122 and 56-35-129. **Administrative History:** Original rule certified June 10, 1974. Repeal and new rule filed January 20, 1984; effective February 19, 1984. Repeal and new rule filed November 10, 1994; effective January 24, 1995.

0780-1-12-.02 FILING OF RATES

- (1) On April 1, 1995, every rating organization licensed pursuant to T.C.A., § 56-35-132 shall file with the Commissioner for its members and subscribers in this state, and every

(Rule 0780-1-12-.02, continued)

title insurance company doing business in this state which is neither a member of nor a subscriber to such a rating organization shall file with the Commissioner, the schedule of rates to be charged by such members, subscribers and/or company in this state; as follows:

- (a) An all inclusive rate for use by the company, its title insurance agencies, its title insurance agents and its approved attorneys in insuring title to real property located in those counties with a population of more than 275,000 but not more than 700,000, as reported in the 1980 Census or any subsequent census, in which the company proposes to do business. Such rate need not be the same in all such counties.
 - (b) An all inclusive rate, except for charges for abstracts of title, for use by the company, its title insurance agencies, its title insurance agents and its approved attorneys in insuring title to real property located in those counties with a population of more than 700,000, as reported in the 1980 Census or any subsequent census, in which the company proposes to do business.
 - (c) That portion of the rates specified in subsection (1)(a) and (1)(b) of this section, which shall be the risk rate for the purposes of the tax payable under the provisions of T.C.A. §56-35-107, and establishment of the reserves required under T.C.A §§56-35-115 and 56-35-116.
 - (d) The risk rate to be applied in those counties with a population of less than 275,000, as reported in the 1980 Census or any subsequent census, in which the company proposes to do business as the aggregate consideration for the functions embraced by the definition of "risk rate" in T.C.A. §56-35-102(a)(8), and for the calculation of said taxes and reserves.
- (2) On April 1, 1995, every title insurance company which proposes to do business in any county in this state having a population of more than 700,000, as reported in the 1980 Census or any subsequent census, shall file with the Commissioner a schedule of rates for abstracts of title, however denominated, to be made in contemplation of the issuance of each and every commitment, binder or policy of title insurance to be issued by the company, its title insurance agencies or its title insurance agents in insuring title to real property located in such county, whether such abstracts of title be made from a title plant or from the public records.

Authority: T.C.A. §§56-35-107, 56-35-111, 56-35-115, 56-35-116, 56-35-122, 56-35-129 and 56-35-132.

Administrative History: Original rule Certified June 10, 1974. Repeal and new rule filed January 20, 1984; effective February 19, 1984. Repeal and new rule filed November 10, 1994; effective January 24, 1995.

0780-1-12-.03 ADHERENCE TO SCHEDULE OF RATES

Every title insurance company, its title insurance agencies, its title insurance agents and its approved attorneys shall adhere to schedules of rates in effect prior to the effective date of this rule until such time as the schedule of rates filed by such company pursuant hereto shall have been approved by the Commissioner, or until the expiration of sixty (60) days from the date of receipt by the Commissioner of such filing without the Commissioner's having issued notice of his written disapproval thereof, as set forth in T.C.A. §56-35-111, whichever shall first occur. Thereafter, no title insurance company, its title insurance agencies, its title insurance agents or its approved attorneys shall make any rate charge except in accordance with the schedule of rate which is in effect for said title insurance company as provided in T.C.A. §56-35-111, and herein.

(Rule 0780-1-12-.03, continued)

Authority: T.C.A. §§56-35-111 and 56-35-122. **Administrative History:** Original rule filed June 10, 1974. Repeal and new rule filed January 19, 1984; effective February 1984. Repeal and new rule filed November 10, 1994; effective January 24, 1995.

0780-1-12-.04 RISK RATE

- (1) The risk rate filed pursuant to subparagraphs (c) and (d) of Rule 0780-1-12-.02 which is to serve as the basis for the calculation of the taxes and the establishment of the reserves therein recited shall encompass the entire consideration for the functions embraced by the definition of “risk rate” in T.C.A. §56-35-102(a)(8), without diminution for commissions paid to or retained by a title insurance agency or a title insurance agent.
- (2) No portion of any risk rate filed pursuant to subparagraphs (c) and (d) of Rule 0780-1-12-.02 shall be paid to any person to defray the cost of abstracting, record searching, certificates as to the record title to real estate, escrow, and closing services, examination of title or any other service or function not embraced by the definition of “risk rate” in T.C.A., § 56-35-102(a)(8).

Authority: T.C.A. §§56-35-102 and 56-35-122. **Administrative History:** Original rule certified June 10, 1974. Repeal and new rule filed January 20, 1984; effective February 19, 1984. Repeal and new rule filed November 10, 1994; effective January 24, 1995.

0780-1-12-.05 ALL INCLUSIVE RATES – EXAMINATION FEES

- (1) Any title insurance company which, under its plan of operation, either directly or through its title insurance agency or title insurance agent, will pay any portion of its schedule of all inclusive rates to an approved attorney for examination of title shall file with the Commissioner a statement of that portion of such rate which will be paid therefor. Such portion need not be the same in all counties.
- (2) No title insurance company, title insurance agency or title insurance agent shall pay to an approved attorney any portion of an all inclusive rate unless such approved attorney does, in fact, examine and certify to the title insurance company the title insured.
- (3) Any additional fees charged by an attorney to a client shall not be paid by the title insurance company, its title insurance agencies or its title insurance agent.

Authority: T.C.A. §§56-35-111, 56-35-122 and 56-35-129. **Administrative History:** Original rule certified June 10, 1974. Repeal and new rule filed January 20, 1984; effective February 19, 1984. Repeal and new rule filed November 10, 1994; effective January 24, 1995.

0780-1-12-.06 RATE STANDARDS

- (1) Rates shall not be inadequate, excessive, or unfairly discriminatory.
- (2) Rates are excessive if in the aggregate they are likely to produce a long run profit that is unreasonably high in relation to the riskiness of the class of business, or if expenses are unreasonably high in relation to the services rendered.
- (3) Rates are inadequate if they are clearly insufficient, together with investment income attributable to them, to sustain projected losses and expenses, or if the continued use of such fees will have the effect of substantially lessening competition or the effect of tending to create a monopoly.

(Rule 0780-1-12-.06, continued)

- (4) Rates are unfairly discriminatory if the premium charged for any classification is not reasonably related to the services performed or the risks assumed by the insurer. Provided, however, within rate classifications premiums may, to a reasonable degree, be less in the case of small insurances and the excess may be charged against larger insurances, without rendering the rate unfairly discriminatory.
- (5) In making or reviewing rates, due consideration shall be given to past and prospective loss experience, to exposure to loss, to underwriting practice and judgment, to past and prospective expenses including amounts paid to or retained by title agents, to investment income, to a reasonable margin for profit and contingencies, and to all other relevant factors both within and outside of this state.
- (6) The Commissioner will consider unfair, unjust or unfairly discriminatory schedules of rate which, among other things:
 - (a) do not state a definite charge for every bracket of coverage;
 - (b) set forth more than one schedule of rates applicable to a given county;
 - (c) provide for the negotiation or bidding of price.

Authority: T.C.A. §§56-35-111 and 56-35-122. **Administrative History:** Original rule certified June 10, 1974. Repeal and new rule filed January 20, 1984; effective February 19, 1984. Repeal and new rule filed November 10, 1994; effective January 24, 1995.

0780-1-12-.07 FINANCIAL AND STATISTICAL REPORTING

In addition to the schedule of rates required under Rule 0780-1-12-.02, all title insurance companies and/or title rating organizations doing business in Tennessee shall by June 1, 1995 file financial, statistical and loss data on specimen forms approved by the Commissioner. These specimen forms will be supplied by the Commissioner with a letter of instruction for their completion. After the original filing of such forms, the forms shall be filed each year on June 1st. The Commissioner, if he deems it necessary, may appoint an agency to collect such data. Agents are required to supply to the company the statistics required by these forms. Once a schedule of rates with financial, statistical and loss data has been filed with the Department, any amendment to such rates or forms filed either at the request of the Commissioner or company and/or rating organization shall be considered to be a new filing within the requirements of T.C.A. §56-35-111.

Authority: T.C.A. §§56-35-111 and 56-35-122. **Administrative History:** Original rule certified June 10, 1974. Repeal and new rule filed January 20, 1984; effective February 19, 1984. Repeal and new rule filed November 10, 1994; effective January 24, 1995.

0780-1-12-.08 CLOSING STATEMENT

The closing statement prepared by any title insurance company or its authorized agent shall show the names of all persons, firms, partnerships or corporations receiving compensation and the amount thereof out of the charges for title insurance binders, commitments, policies or escrow closing charges involved in the transaction.

Authority: T.C.A. §§56-35-122 and 56-35-130. **Administrative History:** Original rule certified June 10, 1974. Repeal and new rule filed January 20, 1984; effective February 19, 1984. Repeal and new rule filed November 10, 1994; effective January 24, 1995.

0780-1-12-.09 ANNUAL STATEMENT

The Annual Statements filed by all title insurance companies with the Commissioner of Commerce and Insurance shall give in detail all pertinent information required by him.

(Rule 0780-1-12-.09, continued)

Authority: T.C.A. §§56-35-108 and 56-35-122. **Administrative History:** Original rule certified June 10, 1974. Repeal and new rule filed January 20, 1984; effective February 19, 1984. Repeal and new rule filed November 10, 1994; effective January 24, 1995.

0780-1-12-.10 MORTGAGEE’S TITLE POLICY

All title insurance companies issuing mortgagee’s title insurance upon a loan made simultaneously with the purchase of all or part of the real estate securing such loans, where no owner’s title insurance policy has been ordered, shall, prior to the disbursement of the loan funds or the issuance of the mortgagee’s title policy, cause the mortgagor to be advised in writing of the fact that a mortgagee’s title insurance policy is to be issued, of the fact that such policy does not afford title insurance protection to the mortgagor, and of the mortgagor’s right to obtain title insurance in his own favor; and if the mortgagor elects not to purchase owner’s title insurance the company shall obtain from him a statement in writing that he has received such notice and that he waives his right to purchase owner’s title insurance. The form of the written notice and waiver shall be as follows:

NOTICE OF WAIVER

Department of Commerce and Insurance
State of Tennessee

.....
RE:

(address or brief property description)

Pursuant to the Regulations of the Department of Commerce and Insurance of the State of Tennessee, notice is hereby given that a mortgagee’s title insurance policy is to be issued to your mortgage lender, that such policy does not afford title insurance protection to you in the event of a defect or claim of defect in title to the real estate which you are acquiring (such as unpaid bills for labor and material, forgery, missing heirs or tax liens), and that an owner’s title insurance policy in your favor for the amount of your purchase price (or for the amount of your purchase price plus the cost of any improvements which you anticipate making) may be purchased.

Departmental Regulations require that you sign the statement below if you do not wish to purchase this protection.

Name of Company Issuing Policy

This is to certify that we have received the foregoing notice and waive our right to purchase an owner’s title insurance policy for our protection. We acknowledge that (insert name of company) shall have no responsibility to us for the status of the title to the real estate we are acquiring.

Signature of Mortgagors

Authority: T.C.A. §§56-35-111 and 56-35-122. **Administrative History:** Original rule certified June 10, 1974. Repeal and new rule filed January 20, 1984; effective February 19, 1984. Repeal and new rule filed November 10, 1994; effective January 24, 1995.

0780-1-12-.11 REVOCATION OF LICENSE

The Commissioner may, upon good cause shown, revoke or suspend the license of any title insurance company, agency or agents doing business in this State for a violation of, or neglect to comply with, any provision of these regulations.

Authority: T.C.A. §56-35-122. *Administrative History:* Original rule certified June 10, 1974. Repeal and new rule filed January 20, 1984; effective February 19, 1984. Repeal and new rule filed November 10, 1994; effective January 24, 1995.

0780-1-12-.12 ATTORNEY AND CLIENT

Nothing in these regulations shall be construed to affect in any manner the relationship of attorney and client, or the fees paid for services performed by a licensed attorney-at-law.

Authority: T.C.A. §56-35-122. *Administrative History:* Original rule filed November 10, 1994; effective January 24, 1995.