

TITLE 13 INSURANCE
CHAPTER 14 TITLE INSURANCE
PART 3 AGENCY AGREEMENTS

13.14.3.1 ISSUING AGENCY: Office of Superintendent of Insurance, Title Insurance Bureau.
[4/1/1996; 13.14.3.1 NMAC - Rn, 13 NMAC 14.4.1 & A, 5/15/2000; A, 7/31/2014]

13.14.3.2 SCOPE: This rule applies to all title insurers and title insurance agents conducting title insurance business in New Mexico.
[4/1/1996, 11/1/1996; 13.14.3.2 NMAC - Rn, 13 NMAC 14.4.2, 5/15/2000]

13.14.3.3 STATUTORY AUTHORITY: Section 59A-30-4 NMSA 1978.
[6/16/1986...4/1/1996; 13.14.3.3 NMAC - Rn, 13 NMAC 14.4.3, 5/15/2000]

13.14.3.4 DURATION: Permanent.
[4/1/1996; 13.14.3.4 NMAC - Rn, 13 NMAC 14.4.4, 5/15/2000]

13.14.3.5 EFFECTIVE DATE: June 16, 1986, unless a later date is cited at the end of a section.
[6/16/1986, 11/1/1996; 13.14.3.5 NMAC - Rn, 13 NMAC 14.4.5 & A, 5/15/2000]

13.14.3.6 OBJECTIVE: The purpose of this rule is to establish requirements for agency agreements between title insurance agencies and title insurance agents.
[11/1/1996; 13.14.3.6 NMAC - Rn, 13 NMAC 14.4.6 & A, 5/15/2000]

13.14.3.7 DEFINITIONS: See 13.14.1 NMAC.
[11/1/1996; 13.14.3.7 NMAC - Rn, 13 NMAC 14.4.7, 5/15/2000]

13.14.3.8 ASSUMPTION OF RISKS BY AGENTS: On and after October 7, 1985, no agency agreement or other contract between a licensed New Mexico title insurance agent and an insurer admitted to write title insurance in New Mexico shall directly or indirectly require said agent to assume either partial or total liability for a risk insured pursuant to these regulations and in accordance with the underwriting standards of the insurer, except as follows:

A. Gross negligence of agent. If the agent, or any person employed by the agent on his behalf, is grossly negligent by error or omission in the title search or examination, or in preparation or issuance of the policy, binder or commitment, or in the determination that the insured estate has been created, conveyed or modified as insured, or in the recording of the instruments creating, modifying or conveying the insured estate and such error or omission causes a loss to the insurer under the terms of the policy issued by the agent, said agent may be liable to the insurer for all or part of any payment made by the insurer to an insured under a claim or claims arising from said error or omission. The laws of New Mexico determine the current standards and definition of gross negligence (from time to time).

B. Disregard of written instructions. If the agent, or any person employed by the agent on his behalf, shall disregard the written instructions of the insurer (including, but not limited to, specific underwriting standards or instructions, risk determinations, liability limitations or prior approval requirements) or of an insured or other party to a transaction resulting in the issuance of a title insurance policy, and such written instructions are not contrary to, or in contravention of, these regulations or the laws of New Mexico and/or the United States of America, and the failure to follow said written instructions results in a loss to the insurer under the terms of the policy issued by the agent, said agent may be liable to the insurer for all or part of any payment made by the insurer to an insured under a claim or claims arising from said disregard of written instructions.

C. Fraud, deceit, theft, etc. If the agent, or any person employed by the agent on his behalf, shall be guilty of fraud, deceit, theft or any similar intentional act for which a person may be prosecuted criminally or sued (but not negligence) and such act results in a loss to the insurer under the terms of the policy issued by the agent, said agent may be liable to the insurer for all or part of any payment made by the insurer to an insured under a claim or claims arising from said intentional act of the agent or his employee.

D. Matters covered by New Mexico closing protection letter. If the agent, or any person employed by the agent on his behalf, shall do or fail to do any act which results in the insurer paying a claim (based upon said act or failure to act) to any person pursuant to a New Mexico closing protection letter issued by the insured, said agent

may be liable to the insurer for all or part of any claim payment made by the insurer to a person protected by said closing protection letter.

[6/16/1986, 5/1/1988; 13.14.3.8 NMAC - Rn, 13 NMAC 14.4.8, 5/15/2000; A, 3/1/2016]

13.14.3.9 PAYMENTS OF CLAIMS BY INSURERS: No insurer shall deny or postpone the payment of a valid claim made pursuant to a title insurance policy or closing protection letter by reason of liability of its agent under the terms of its agency agreement or any other agreement between the insurer and its agent. It is the express intention of these rules that all insureds (and parties covered by a closing protection letter) shall be compensated for just claims by said insurer irrespective of any actual or pending determination of liability between said insurer and its agent.

[6/16/1986; 13.14.3.9 NMAC - Rn, 13 NMAC 14.4.9, 5/15/2000]

13.14.3.10 PAYMENTS OF PREMIUM AND MAINTENANCE TAXES OR ASSESSMENTS BY INSURERS: In order to provide for a uniform percentage of premiums to be retained by title insurers and a uniform method of payment of all taxes and assessments made pursuant to the New Mexico Insurance Code, as amended from time to time, all title insurance agency agreements shall require (and all insurers shall comply whether or not there is an agreement) that the insurer shall pay all premium taxes or assessments and all maintenance taxes or assessments as the same may come due and payable, and the said insurers shall report all premiums received by it directly or by its agents on a one hundred percent gross basis for the purposes of said taxes and assessments.

[6/16/1986, 3/1/1992; 13.14.3.10 NMAC - Rn, 13 NMAC 14.4.10, 5/15/2000]

13.14.3.11 PREMIUM DIVISION WITH AGENTS -- OTHER FEES AND EXPENSES:

A. All agency contracts, agency agreements and other contracts between licensed New Mexico title insurance agents and insurers admitted to write title insurance in New Mexico shall provide that agents shall retain the following amounts of all gross premiums on policies, and shall remit to the insurer the remainder of all gross premiums:

- (1) for amounts of insurance up to two million dollars (\$2,000,000), agents shall retain eighty percent;
- (2) for additional amounts of insurance over two million dollars (\$2,000,000) and up to five million dollars (\$5,000,000), agents shall retain seventy-five percent;
- (3) for additional amounts of insurance over five million dollars (\$5,000,000) and up to ten million dollars (\$10,000,000), agents shall retain seventy percent;
- (4) for additional amounts of insurance over ten million dollars (\$10,000,000) and up to twenty-five million dollars (\$25,000,000), agents shall retain sixty-five percent;
- (5) for additional amounts of insurance over twenty-five million dollars (\$25,000,000) and up to fifty million dollars (\$50,000,000), agents shall retain sixty percent; and
- (6) for additional amounts of insurance over fifty million dollars (\$50,000,000), agents shall retain fifty percent.

B. Agents shall retain eighty percent of all gross premiums paid for the following coverages and shall remit to the insurer the remainder of the gross premiums:

- (1) all title commitments and binders as provided for in Subsection A of 13.14.9.19 NMAC;
- (2) deletion of standard exception 4 from the title commitment or binder for mechanics' lien coverage where there is no loss of insured priority over mechanics' liens as provided for in 13.14.6.15 NMAC and 13.14.10.9 NMAC for owner's policies or 13.14.7.14 NMAC and 13.14.9.40 NMAC for loan policies; and
- (3) any endorsements providing for fixed premiums of one hundred dollars (\$100) or less.

C. Agents shall retain the amounts attributable to the pro-rata premium for each level of the amounts of insurance as set forth in Subsection A above for the following coverages and shall remit to the insurer the remainder of the gross premiums:

- (1) premium for deletion of standard exception 3 from the title commitment or binder for survey coverage in owner's or leasehold owner's policies as provided for in 13.14.6.14 NMAC and 13.14.10.10 NMAC;
- (2) extra-hazardous premium for deletion of standard exception 4 from the title commitment or binder for mechanics' lien coverage where there is a loss of insured priority over mechanics' liens as provided for in 13.14.6.15 NMAC and 13.14.10.9 NMAC for owner's policies or 13.14.7.14 NMAC and 13.14.9.40 NMAC for loan policies; and,

(3) any endorsements providing for fixed premiums of more than one hundred dollars (\$100.00) or variable premiums based upon a percentage of the basic premium rate.

D. In addition, agents shall retain no part of the additional twenty-five cents (\$0.25) per one thousand dollars (\$1,000) collected on policy amounts in excess of ten million dollars (\$10,000,000) as provided for in 13.14.9.18 NMAC.

E. This premium division shall not apply to replacement policies in the case of insolvent insurers issued pursuant to 13.14.6.22 NMAC, 13.14.7.20 NMAC and 13.14.9.26 NMAC. Agents shall retain forty-two and one-half percent of the gross premium collected for such replacement policies and shall remit to the insurer the remainder of said gross premium.

F. These premium divisions shall remain in effect until altered by the superintendent who shall review the same biennially at the title insurance hearing held in November of every odd numbered year or as otherwise specifically provided by these regulations.

G. Fees, which are not premium, such as inspection fees, cancellations fees, additional chain of title fees, unusual complexity fees, escrow fees and other charges (whether mentioned in these regulations or not) are not subject to division between agent and insurer.

H. No agent or insurer shall pay or receive any consideration for title insurance business (or referral of business) other than that division of premiums set forth herein. Insurers shall not reward or otherwise compensate agents (or vice versa) directly or indirectly for business other than as herein provided.

I. No agent shall be required to contribute or pay any amount to an insurer for reinsurance or otherwise, and any contractual provision to the contrary shall be void and unenforceable.

J. Title insurers may pay on behalf of, or reimburse their agents for expenses associated with any instruction, lectures or seminars conducted by that title insurer for its agents, if such instruction, lectures or seminars have been approved in advance by the office of the superintendent of insurance for continuing education credit under Section 59A-12-26 NMSA 1978. An insurer conducting such instruction, lectures or seminars shall submit to the superintendent for approval, in advance, an agenda and detailed budget for such instruction, lectures or seminars. Such courses of instruction, lectures or seminars shall be offered by the title insurer to all of its agents on a non-discriminatory basis.

[6/16/1986..4/3/1995; 13.14.3.11 NMAC - Rn, 13 NMAC 14.4.11 & A, 5/15/2000; A, 7/1-/2005; A, 9/1/2007; A, 7/1/2008; A, 7/31/2014; A, 3/1/2016; A, 7/1/2018]

13.14.3.12 AGENCY AGREEMENTS: All insurers shall amend existing agency agreements with each of their respective licensed New Mexico agents after March 1, 1988 but before May 1, 1988 to conform with the provisions of these regulations as last amended, and shall file the same with the superintendent on or before May 1, 1988. Such amendment may be in the form of an addendum to the existing agreement, attached to and made a part thereof. All such agreements entered into henceforth shall conform with the provisions of these regulations as last amended, and shall be filed with the superintendent promptly upon execution.

[6/16/1986, 5/1/1988; 13.14.3.12 NMAC - Rn, 13 NMAC 14.4.12, 5/15/2000; A, 3/1/2016]

13.14.3.13 CHARGE TO BE MADE FOR ALL SERVICES:

A. No person doing the business of title insurance shall furnish or offer to furnish services, information, appraisals, subdivision ownership lists, farm packages, estimates or income production potential, pre-search or listing packages, information kits or similar packages containing information about one or more parcels of real property without making an actual charge for the same.

B. Title insurers and title insurance agents shall collect actual charges in the ordinary course of their business operations. Title insurers and title insurance agents shall not provide additional or new services to individuals who have failed to pay actual charges for prior services.

[4/1/1993, 4/1/1994; 13.14.3.13 NMAC - Rn, 13 NMAC 14.4.13, 5/15/2000; A, 7/1/2006]

13.14.3.14 PAYMENT OF PREMIUM OF INSURERS: The title insurance agent will render accounts to the title insurer detailing all insurance transactions and remit the title insurer's share of premiums collected to the title insurer by the latter of 45 days after the end of the month of the effective date of the policy, or, 45 days following the issuance of a policy as to which the issuance is delayed due to the transaction closing prior to the time at which all requirements for issuance of the policy have been fulfilled.

[4/1/1996; 13.14.3.14 NMAC - Rn, 13 NMAC 14.4.14, 5/15/2000]

13.14.3.15 MARKETING ACTIVITIES: A title insurer or title insurance agent conducting the business of title insurance shall not:

A. make any monetary payment to any producer, unless the payment is for the actual cost of bona fide supplies or services received by the title insurer or agent;

B. make any in kind payment to any producer or provide any free products or services, including but not limited to postage, postage machines, facsimile machines, computer hardware or software, copy machines, telephones, or office space to any producer;

C. engage in joint advertising by any means of communication or media that names a specific producer unless the producer pays its share of the advertising cost in direct proportion to its prominence in the advertisement;

D. provide video equipment or any other type of electronic or cyber equipment or services, such as “virtual tours” unless the producer pays at least the actual cost for the equipment or services;

E. provide advertising by any means of communication or media for a producer unless the producer pays at least the actual cost for the advertisement to the title insurer or agent;

F. sponsor, co-sponsor, provide free door prizes, refreshments or meals at any producer’s open house, tour of open houses, awards banquet, or company party unless a representative of the title insurer or agent is present and educational or marketing materials and signage are on-site for the function; at no time shall the cost of any sponsorship exceed the commensurate advertising benefit of the educational or marketing materials and signage provided;

G. sponsor, co-sponsor, provide free door prizes, refreshments or meals at any producer’s open house unless the title insurer or agent receives commensurate advertising benefit;

H. provide free meals to any producer unless the title insurer or agent is present, title insurance business is discussed and the meals are not a regular occurrence; a title insurer or agent shall not provide free recreational activities or entertainment to any producer under any circumstance;

I. enter into any lease or rental agreement for office space with a producer unless:

(1) the lease or rental agreement is for commercially reasonable terms and at least the fair market rental rate of the property; and

(2) the property is physically occupied by at least one bona fide full time employee of the title insurer or agent if the producer is the lessor or by one bona fide full time employee of the producer if the title insurer or agent is the lessor;

J. provide a career continuing education course for producers, unless each producer in attendance pays at least the actual per person cost for the course to the title insurer or agent; or

K. engage in any other activity otherwise prohibited by Section 59A-16-17 NMSA 1978.

[13.14.3.15 NMAC - N, 7/1/2006]

HISTORY OF 13.14.3 NMAC:

Pre-NMAC History.

ID 74-1, Article 10, Chapter 58, Rule 2, Regulations for Filing Title Insurance Forms and Rates, 3/7/1974

SCC-85-6, Insurance Department Regulation 30 - Title Insurance, 9/6/1985

SCC-86-1, Insurance Department Regulation 30 - Title Insurance, 5/9/1986

NMAC History.

Re-promulgated a portion of SCC-86-1, Insurance Department Regulation 30 - Title Insurance, as 13 NMAC 14.4, Agency Agreements, filed 10/2/1996

Recompiled 13 NMAC 14.4, Agency Agreements, as 13.14.3 NMAC, Agency Agreements, filed 4/28/2000, amended effective 7/31/2014.

13.14.3 NMAC, Agency Agreements, filed 7/31/2014, amended effective 3/1/2016.

13.14.3 NMAC, Agency Agreements, filed 3/1/2016, amended effective 7/1/2018.

History of Repealed Material.

ID 74-1, Article 10, Chapter 58, Rule 2, Regulations for Filing Title Insurance Forms and Rates - Superseded 9/6/1985

SCC-85-6, Insurance Department Regulation 30 - Title Insurance- Superseded 5/9/1986.