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BULLETIN No. 24-7

DATE: April 1, 2024
TO: All title insurers, title insurance agencies, and title insurance producers writing title insurance in Maryland
RE: Code of Maryland Regulations (“COMAR”) 31.04.22 and § 10-121

This Bulletin supersedes Bulletin No. 23-16 and is intended to notify all title insurers, title insurance agencies, and title insurance producers writing title insurance in Maryland of amendments to COMAR 31.04.22.02 through .07 that were promulgated to implement changes to Md. Ann. Code, Ins. § 10-121(k)¹ enacted during the 2022 legislative session.

On May 29, 2022, the General Assembly enacted S.B. 293 (2022 Maryland Laws Ch. 701 (S.B. 293)), which amended § 10-121(k) of the Insurance Article. The amendment, which took effect on October 1, 2022, allows insurers to conduct reviews (formerly “audits”) on-site, remotely, or any combination of these. Additionally, only reviews with identified issues are required to be reported by the insurer to the Maryland Insurance Administration. The amendments to the Regulation reflect and implement the legislative changes. A copy of the Regulation is attached for your information. It also can be accessed here: <https://dsd.maryland.gov/regulations/Pages/31.04.22.06.aspx>

Required Reporting and Notification

COMAR 31.04.22.07

COMAR 31.04.22.07B provides that “A title insurer shall notify the Commissioner in writing ... within 2 calendar days if a title insurer has reason to believe that a principal

¹ Unless otherwise noted, all statutory references herein are to the Insurance Article

agent has converted or misappropriated money received or held in trust in addition to filing any required report.”

Additionally, COMAR 31.04.22.07A states, in pertinent part, “if a title insurer has reason to believe that the principal agent has engaged in, or is engaging in, conduct that is prohibited by Insurance Article, § 10-126, Annotated Code of Maryland, the title insurer shall notify the Commissioner in writing ... within 10 calendar days after obtaining such knowledge or belief.”

Notice to the Commissioner made pursuant to either of these sections should be sent electronically to: mc_filings.mia@maryland.gov.

COMAR 31.04.22.06

If the title insurer has reasonable cause to believe that the title insurance producer or agency engaged in activities prohibited by § 10-126 of the Insurance Article, the title insurer must file the report with the Commissioner within 45 days after the completion of the review. The submission is required regardless of whether the prohibited activities ceased or were remedied prior to, during the course of, or as a result of the review.

Title review reports should be submitted through the Maryland Insurance Administration’s website at <https://marylandinsurance.jotform.com/230026269509051>.

The Administration has developed the following examples, in order to assist title insurers in their efforts to comply with the reporting requirements set forth in § 10-121(k) and COMAR.

The following examples illustrate situations with possible violations of § 10-126 that may trigger mandatory reporting. Examples include, but are not limited to:

- Failure of the producer to reconcile any trust accounts via a three way reconciliation with the trial balance within sixty days from the period ending date of the trust account statement without reasonable explanation in the opinion of the reviewing underwriter, if the reviewing underwriter has reasonable cause to believe that the failure to reconcile the accounts is due to incompetence, conversion, or misappropriation of trust funds, or a violation of any of the prohibited activities of § 10-126.
- Disbursements out of the escrow account which are inconsistent with the settlement statement and for which no reasonable explanation has been provided to the reviewing underwriter explaining why the disbursement was necessary for the successful completion of the transaction; or the reviewing underwriter has a reasonable basis to believe that there is an indication of conversion or misappropriation of trust funds or a suspected violation of any of the prohibited activities of § 10-126.
- Escrow checks or wires that were returned for nonsufficient funds unless the producer promptly corrected the overdraw, and there is no evidence of incompetence, conversion, or misappropriation of trust funds.

- Any disbursements which do not appear on the closing disclosure or seller's settlement statement and for which no reasonable explanation has been provided to the reviewing underwriter explaining why the disbursement was necessary for the successful completion of the transaction, or the reviewing underwriter has a reasonable basis to believe there is an indication of a violation of applicable laws.
- Outstanding deposits that are not deposited within seven days of receipt or funded by the producer within thirty days of settlement, if the reviewing underwriter has a reasonable basis to believe there is an indication of incompetence, conversion or misappropriation of trust funds or a suspected violation of any of the prohibited activities of Insurance Article §10-126.
- Disbursements for settlements which occurred more than one year prior to the commencement of the audit and have not yet cleared and the reviewing underwriter has a reasonable basis to believe there is an indication of incompetence, conversion, or misappropriation of trust funds or a suspected violation of any of the prohibited activities of Insurance Article §10-126.
- If there are any files on the trial balance report with negative balances greater than \$5,000.00 that have not been remedied by the producer at the conclusion of the underwriter's review, or within forty-eight hours of being notified of the negative balance by the producer's bank or, and the reviewing underwriter has a reasonable basis to believe there is an indication of incompetence, or conversion or misappropriation of trust funds or a suspected violation of any of the prohibited activities of Insurance Article §10-126.
- Failure of the agency to comply with § 22-103 of the Insurance Article.
- Failure to file the agent's MAHT report pursuant to COMAR 31.16.03.06.
- Unlicensed individuals exercising control over any trust money.
- Failure to register any trade name with the Commissioner in compliance with § 10-113 of the Insurance Article.

Questions or comments may be sent to Maryam Akinmade, Assistant Chief, Title, Maryland Insurance Administration, 200 Saint Paul Place, Suite 2700, Baltimore, MD 21202, or call 410-468-2384, or email to maryam.akinmade@maryland.gov

KATHLEEN A. BIRRANE
Commissioner

signature on file with original

By: _____

Mary M. Kwei
Associate Commissioner
Market Regulation & Professional Licensing



31.04.22.06

.06 Report.

A. A title insurer shall prepare a written report setting forth the results of its annual review, which shall be made available to the Commissioner upon request.

B. A title insurer shall file a report with the Commissioner within 45 calendar days after the completion of the review if the title insurer has reasonable cause to believe that the title insurance producer or agency at any time engaged in any of the prohibited activities set forth in Insurance Article, §10-126, Annotated Code of Maryland. The report shall be submitted regardless of whether the prohibited activities ceased or were remedied prior to, during the course of, or as a result of the review. The report shall be in writing on a form specified by the Commissioner and submitted by electronic means directed by the Commissioner. .

C. The report shall address the following areas:

(1) If applicable, a detailed description of the basis for the reasonable cause to believe that the title insurance producer or agency engaged in any of the prohibited activities set forth in Insurance Article, §10-126, Annotated Code of Maryland;

(2) The name, Maryland producer license number, and contact information of the principal agent or any insurance producer designated under Insurance Article, §10-106, Annotated Code of Maryland;

(3) The name and Maryland producer license number of any insurance producer associated with the principal agent, including the name and license number or numbers of any TIPICs utilized by the agency and confirmation that they are appointed with the insurer;

(4) The file number and property address for each file that was reviewed;

(5) The principal agent's escrow accounts and related practices, including a review to ensure that:

(a) Only licensed insurance producers exercise control over trust money;

(b) Premium monies are held in compliance with COMAR 31.03.03;

(c) Funds received by the principal agent are accurately accounted for in the books and records of the principal agent; and

(d) The principal agent's escrow accounts have been properly reconciled as of the date of the completed review and the trust deposits held on its behalf are reasonably ascertainable from the books of account and records of the principal agent;

(6) The report shall indicate if there are or have been any escrow or account shortages at any time during the review period;

(7) Except for transfers of money between the principal agent's escrow or trust account and the principal agent's operating account for the fees due the principal agent, transfers of money between principal agent's accounts that contain or have contained trust money deposits;

(8) Discrepancies between receipts and disbursements, and, if discrepancies are found, a description of the discrepancies in detail and whether the title producer or lender prepared the closing disclosure or HUD-1;

(9) Compliance by the principal agent with the annual MAHT report requirement under COMAR 31.16.03.06;

(10) Information relating to escrow accounts or settlement, closing, or title indemnification conducted by a principal agent, or title insurance producer acting on behalf of the title insurer;

(11) The principal agent's policy blank inventory;

(12) The principal agent's failure to comply with the title insurer's financial accounting requirements; and

(13) Any additional information requested by the Commissioner.

D. A title insurer is not precluded from providing a more comprehensive description of the review.

E. The report shall contain:

(1) The certification from the principal agent required under Regulation .04B(7) of this chapter; and

(2) A copy of the express written consent required under Regulation .04B(5)(c) of this chapter, if premium monies are comingled with the principal agent's personal funds.