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BULLETIN No. 20-29

DATE: July 23, 2020

TO: All Title Insurance Carriers

RE: Temporary Suspension of Section 10-121 (k) of the Insurance Article, Annotated Code of Maryland

This Bulletin addresses the statutory obligation of title insurers to conduct in person audits of certain title insurance producers during the calendar year 2020 in light of the COVID-19 pandemic.

On March 5, 2020, Governor Larry Hogan issued a Proclamation declaring a state of emergency and catastrophic health emergency because of COVID-19. The declaration was renewed on March 17, 2020, April 10, 2020, May 6, 2020, June 3, 2020 and July 1, 2020. On March 12, 2020, Governor Hogan issued an Order authorizing the suspension of deadlines otherwise required by statute if certain conditions are met. That Order was amended and restated on June 19, 2020 by Order No. 20-06-19-01. Section III of the June 19 Order states:

III. Suspension of Legal Time Requirement

- a. The head of each unit of State or local government may, upon a finding that the suspension will not endanger the public health, welfare, or safety, and after notification to the Governor, suspend the effect of any legal or procedural deadline, due date, time of default, time expiration, period of time, or other time of an act or event described within any State or local statute, rule or regulation that it administers. The unit head shall provide reasonable public notice of any such suspension.
- b. Such suspension may, at the discretion of the unit head and to the extent that it will not endanger public health, welfare of safety, continue until no later than the 30th day after the date by which the state of emergency is terminated and the catastrophic health emergency is rescinded.

Maryland statutory law requires title insurers to conduct at least one on-site audit of each title insurance producer appointed by the insurer as a principal agent during each calendar year. Section 10-121 (k) of the Insurance Article, Annotated Code of Maryland states:

(k) *Statement of financial condition; on-site review.* --

(1) (i) Except as provided in paragraph (5) of this subsection, the title insurer shall **during each calendar year** conduct **an on-site** review of the underwriting, claims, and escrow practices of each title insurance producer appointed by the insurer as a principal agent as designated in the title insurance agency contract between the insurer and the producer.

Emphasis added. The Code of Maryland Regulations defines “on-site review” as follows:

B. Terms Defined.

(15) “On-site review” means a review of the underwriting, claims, and escrow practices of each principal agent conducted by a title insurer or its designee, at the principal agent’s principal place of business in the State and, if the principal agent’s information to be reviewed is not kept at its principal place of business in the State, then at each site where such information is kept.

COMAR 31.04.22.03(B)(15).

The Insurance Administration is aware that, in response to the pandemic, title insurers licensed to do business in the State have suspended on-site audits of title insurance producers and have been performing audits through virtual and remote means. Given the continuation of the state of emergency, title insurers have requested that the Commissioner suspend the requirement that an on-site audit be performed in calendar year 2020.

On-site reviews of title insurance producers by title insurers are intended to assure that title insurers actively and routinely audit the activities of certain of their appointed producers to confirm compliance with the laws and regulations that apply to underwriting, claims, and escrow requirements. COMAR sets out in detail the scope of the review required to be conducted, including the identification of specific audit tasks. *See* COMAR 31.04.22.04. After conducting research, the Commissioner has concluded that the specific audit tasks required are capable of being performed through virtual audit processes and procedures and, thus, that, as long as a title insurer performs a virtual audit pursuant to processes and protocols that have been submitted to, and deemed adequate by, the Commissioner, the substitution of such a virtual audit for an on-site review will not endanger the public health, welfare, or safety.

For that reason, the Commissioner has provided notice to the Governor that the obligation of title insurers to conduct an on-site review of each of its title insurance producers appointed as a principal agent within a calendar year shall be suspended until the 30th day after the date by which the state of emergency is terminated and the catastrophic health emergency is rescinded for each title insurer which has established and performed within the calendar year 2020 a virtual audit pursuant to processes and procedures submitted to and deemed adequate by the Commissioner. This Bulletin constitutes public notice in accordance with the June 19 Order of that suspension.

The suspension of the annual on-site audit requirement otherwise imposed by 10-121 (k) is subject to the following limitations and conditions:

1. *First*, under the June 19 Order, a time period imposed by statute can only be suspended up to thirty (30) day after the state of emergency is terminated and the catastrophic health emergency is rescinded. If the 30th day following such termination and rescission occurs before December 31, 2020, the suspension of the on-site review requirement imposed by 10-121(k) would itself no longer be of legal effect. That would mean that the obligation to conduct in person audits during calendar year 2020 would be in effect, such that the failure to have conducted the audit would be a literal violation of the statute. However, provided that a title insurer has met the conditions set forth in (2) and (3), the Administration will consider the existence and length of the state of emergency and the catastrophic health emergency in this State; conditions and states of emergency related to COVID-19 in other jurisdictions; travel bans; scheduled plans to conduct on-site audits; and other extenuating factors in determining what, if any, action to take with respect to a title insurer that has not met the on-site element of the statutory review requirement of 10-121(k) in 2020.
2. *Second*, in order to take advantage of the suspension, a title insurer must prepare and submit to the Insurance Administration the procedures that it will use to conduct audits remotely. The submission shall specifically address the audit tasks that are set forth in COMAR and shall be of sufficient detail to allow the Insurance Administration to confirm that the procedures are sufficient to conduct the scope of the review required by section 10-121 (k) and Section 31.04.22.04 of COMAR. Each title insurer will be separately advised whether or not its procedures have been deemed to be sufficient by the Commissioner.
3. *Third*, each title insurer whose virtual review procedures have been deemed sufficient by the Commissioner shall assure that, by the end of calendar year 2020, it has conducted a review of each title insurance producer appointed by the insurer as a principal agent on-site or virtually in accordance with its submitted and approved procedures. Title insurers shall retain records of virtual reviews sufficient to permit the Insurance Administration to confirm that the reviews were performed in accordance with the procedures submitted to the Administration. In addition, all reports of reviews submitted while the suspension remains in effect should clearly indicate, either within the report or within the body of the electronic mail which is transmitted to the Insurance Administration with the report attached, whether the review was conducted on-site or remotely.

Any title insurer that wishes to conduct remote reviews must submit its policies and protocols for conducting such remote reviews to: david.zitterbart@maryland.gov. Submissions should conform to the standard set forth in Paragraph 2 above.

Should you have any questions concerning this Bulletin, please contact Erica J. Bailey, Associate Commissioner Compliance & Enforcement at erica.bailey@maryland.gov or by telephone at 410-468-2113 or David A. Zitterbart, Chief Enforcement Officer, Compliance and Enforcement, Title Unit by e-mail at david.zitterbart@maryland.gov or by telephone at (410) 468-2144.

KATHLEEN A. BIRRANE
COMMISSIONER

By: signature on original

Erica J. Bailey, Associate Commissioner
Compliance & Enforcement