The Title Office Staff recommends that the Commissioner of Insurance amend Rate Rule R-2 Rebates and Discounts to reflect the correct references in Rate Rule R-5 due to the renumbering and rearranging of R-5 through Agenda Item 2008-57.

Additional changes are to amend the terms “Owner” to “Owner’s” and “Mortgagee” to “Loan” throughout this rule and to correct a typo in the last paragraph.

The recommended changes are as follows:

**R-2. Rebates and Discounts**----No Company shall charge for a policy in one transaction and withhold issuance of a policy thereon, nor shall any Company charge a premium for a policy in one transaction and apply the charged premium in a subsequent transaction, except when same covers identical land to that contained in the initial conveyance, and when same shall have been consented to by the parties to all conveyances involved, which consent may be provided for in the contract(s) on which the transaction is based, or may be given in a separate written instrument, or may be evidenced by the acceptance and signing of a closing statement clearly setting forth application of the premium charge as agreed by the parties to the transaction(s). The phrase "one transaction" as used in this rule may include more than one conveyance provided: (i) all grantors and grantees have acknowledged in writing the method of application for premium or premiums to be collected, and (ii) all instruments of conveyance relating to the subject property which is to be insured are unconditionally delivered simultaneously. Each company shall remit the portion of the premium due to the title Insurance Company no later than the 15th day of the second month following the month in which the premium was collected. The provisions of this rule shall also apply to any escrow officer who remits directly to a title insurance company. A company shall not issue or deliver a policy, binder or endorsement until a rate therefore has been adopted by the Commissioner.  The company must collect the full charge for such form, except as follows:

         (a)   When a ~~Mortgagee~~ Loan Policy is issued in the manner provided in Rule P-8.b., the premium for the ~~Mortgagee~~ Loan Policy may be paid in installments if the following conditions are met:
            (1)   The face amount of the policy shall be $5,000,000 or more.

            (2)   The premium for the ~~Mortgagee~~ Loan Policy shall be determined on the date of issuance thereof. As the loan which is the subject of the policy is disbursed, a fraction of the premium for the policy equal to the fraction of the loan then funded shall be paid and upon payment thereof the amount of the coverage of the ~~Mortgagee~~ Loan Policy shall increase by the amount of such funding.

            (3)   The down date endorsement procedure described in rule P-9.b.(4) must be used in connection with such ~~Mortgagee~~ Loan Policy.

If any one of the above conditions is not met with respect to such ~~Mortgagee~~ Loan Policy, the remaining premium due and owing therefore shall be immediately due and payable.

         (b)   When an ~~Owner~~ Owner’s Policy meets the requirements of paragraph (a) above, and is issued in the manner provided in Rule P-8.a., and is issued simultaneously with a ~~Mortgagee~~ Loan Policy as provided in Rule ~~R-5.B~~ R-5.E, the amount of coverage of said ~~Owner~~ Owner’s Policy shall increase in an amount equal to, and contemporaneously with, the increase in the coverage of said ~~Mortgagee~~ Loan Policy.

         (c)   When an ~~Owner~~ Owner’s Policy is issued in the manner provided in Rule P-8.a., but is not issued simultaneously with a ~~Mortgagee~~ Loan Policy as provided in Rule ~~R-5.B~~ R-5.E., the premium for the ~~Owner~~ Owner’s Policy may be paid in installments if the following conditions are met:

            (1)   The face amount of the policy shall be $5,000,000 or more.

            (2)   The premium for the ~~Owner~~ Owner’s Policy shall be determined on the date of issuance thereof. The premium for the ~~Owner~~ Owner’s Policy paid upon issuance thereof shall be the portion of the total premium allocable to the liability under the ~~Owner~~ Owner’s Policy as shown in the liability paragraph prescribed by Rule P-8.a.(1) As the contemplated improvements which are the subject of the ~~Owner~~ Owner’s Policy are made, a fraction of the premium for the policy equal to the amount actually expended by the Insured in improvements since the last premium payment date shall be paid periodically and in no event later than completion thereof, and upon payment of said premium fraction the amount of the coverage of the ~~Owner~~ Owner’s Policy shall increase by the said amount expended in improvements.

            (3)   The down date endorsement procedure described in Rule P-9.a.(3) must be used in connection with such ~~Owner~~ Owner’s Policy.

If any one of the above conditions is not met with respect to such ~~Owner~~ Owner’s Policy, the remaining premium due and owing therefore shall be immediately due and payable.

      (d)   When a qualified intermediary under Internal Revenue Code §1031 takes title on behalf of the ultimate owner (the person making the exchange and receiving the tax benefit), Schedule A of the policy should be prepared as set out in Procedural Rule P-63

An issued policy should not be altered or ~~endrosed~~ endorsed after the deed from the intermediary to the ultimate owner, to change the insured to reflect the name of the ultimate owner. This Rate Rule R-2 strictly prohibits passing through the title insurance premium on multiple conveyances unless proper disclosure is made and the deeds to all conveyances are delivered to the title or closing agent simultaneously and without condition. However, if title coverage is issued as outlined Procedural Rule P-63, the provisions of R-2 as to the pass through premium are not applicable because the policy is issued in the transaction in which the premium was collected.

JUSTIFICATION

This agenda item corrects typographical errors and conforms the language to other rules and forms in the Basic Manual.