

## **GUIDELINES FOR COMPLIANCE AUDITS OF TITLE INSURANCE AGENTS**

Authority for compliance audits of title insurance agents is granted under Section 2602.103 of the *Texas Insurance Code*. Reports for audits conducted under the authority of Section 2602.103 are closed records and not available to the public. This includes underwriters and certified public accountants. Auditors are cautioned about speaking to certified public accountants about agent records without first having obtained *written* permission of the title insurance agent.

The fundamental purpose of the audit of title insurance agents is the determination of compliance with the laws and rules established in Title 11 of the *Code* and the *Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas*. The procedures presented here are designed to illustrate the steps necessary for you to conduct an objective audit of licensed title insurance agents.

The scheduling, auditing and referral of adverse findings for title insurance agencies is the primary function of the Title Examinations Section (Title Division, Property & Casualty) allocated employees of the Texas Department of Insurance. Title Examinations personnel also review the annual CPA escrow audit reports required in Section 2651.151. Funds for the operation of the Title Examinations Section come from the Texas Title Insurance Guaranty Association and are budgeted annually by the Board of Directors of the Association.

The licensing function for those making application for a title insurance agent's license or escrow officer's license and the renewing or amending of current licenses is handled by technicians in the Title Insurance Section (Title Division, Property & Casualty). This section also handles title insurance complaints.

### I. INITIAL VISIT WITH MANAGEMENT

Upon arrival at the title agency, meet with management and explain the purpose of the compliance audit and the audit process. Complete the agency information sheet and going concern questionnaire and present the document request form or forms and escrow accounting procedures questionnaire.

### II. STRUCTURE OF THE AUDIT REPORT

- Report drafts are to be transmitted to Austin electronically. If there is a problem with the computer system, they may be copied on a diskette and mailed with the workpapers.
- Reports are to be single-spaced with triple spacing between paragraphs.
- Paragraphs are not to be indented.
- Major captions are to be uppercased, centered, and underlined.
- Figures are to be reported in whole dollar amounts without a decimal and zeros.
- Reports must have original signature of the auditor.
- Pages must be numbered.
- References should be cited as follows:
  - Orders:
    - “Commissioner's Order No. \_\_\_\_\_ dated \_\_\_\_\_”
    - “Board Order No. \_\_\_\_\_ dated \_\_\_\_\_”
  - *Texas Administrative Code*:

- “28 TAC”
- *Texas Insurance Code*:  
“*Texas Insurance Code*” or “*Code*”
- *Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas*:  
“title insurance manual” or “Basic Manual”
- Attorney General's Opinion:  
“AG Opinion No. \_\_\_\_\_ dated \_\_\_\_\_”

### III. CONTENTS OF THE REPORT

Audit reports of title agents are not exception reports and, as such, should include comments on all items audited during the audit. The standard parts of an audit report are the forepart, the findings and the conclusion.

#### A. Forepart

##### 1. Dates

- a. The date on the first page of the report should coincide with the date of the exit interview. The location shown at the top of the page should indicate, generally, the city where the agency is licensed. The salutation section should disclose the authority under which the audit was conducted and the *exact* name of the agent (as reflected on the title agent's license).
- b. The "as of" date for a compliance audit is not necessarily the end of a fiscal year. It will be considered to be the date of the exit interview and will be shown only on the cover sheet of the report.

##### 2. Scope of Audit

This section of your report is to include the type of audit you conducted: comprehensive, limited scope or restricted.

- a. Comprehensive - Comprehensive compliance audits are normal ones where the audit program is followed, and access to all books and records is available.

The report comments are: "This was a comprehensive compliance audit conducted in accordance with prescribed procedures....."

- b. Limited Scope - The scope of a compliance audit may be limited to only a part of the audit program. This could happen in a follow-up audit conducted to determine that compliance has been achieved in selected areas, which were found to be deficient during the course of the previous comprehensive audit. If the audit is only to include underwriter remittances, it is also limited in scope.

The report comments could be: "The scope of this audit was limited to testing of areas which were determined not to be in compliance with *Texas Insurance Code* rules and regulations during a comprehensive compliance audit conducted in November, 1997." Other examples are given in the sample report.

- c. Restricted - Any audit may be restricted by absence of appropriate records, denial of access to records or lack of cooperation by management.

The report comments could be: "This was a restricted audit and, therefore, not conducted fully in accordance with required procedures due to the fact that the operating account bank statements, deposit tickets and canceled checks were not available."

3. Description of the Agent

a. Description

- Identification of the chapter of the *Code* which governs title agent operations
- Directors and officers (corporation), partners (partnership), owner (sole proprietorship)

[Note: "Officers" are the official officers of the corporation--not the manager or chief financial officer who are employees of the agency.]

- Underwriter appointment(s) and current license number(s)

b. Previous Audit(s)

Information on previous audits is included in a report only if there is a compelling need to emphasize egregious findings from the previous audit(s) that remain uncorrected in the current audit.

Report comments could follow this pattern: "A comprehensive compliance audit of the agent was conducted in March, 1995. Texas Department of Insurance representatives subsequently conducted a limited scope compliance audit in November, 1995, which concentrated on the agent's escrow accounts. Findings of these audits included the following:"

4. Affiliates/Branches

If the title agent is wholly or partially owned by another title agency, is wholly or partially owned by a related business or wholly or partially owns another title agency or related business, include comments under this caption.

If the agent operates branch offices, list them under this caption.

B. FINDINGS

1. This section of the audit report should include *facts only*. The auditor is to report on the situation exactly as it existed. Recommendations and suggestions are to be included in the workpapers rather than in the body of the report.
2. Any major findings that are unusual should appear first in the findings section of the report. (Examples: unlicensed escrow officers or material discrepancy in annual escrow audit report.)
3. Abstract Plants
  - a. Determine if a complete abstract plant test must be performed or if only the currentness of the plant needs to be tested.
  - b. Procedural Rule P-12 states that records of an abstract plant shall be maintained "to current date". "Current date" is interpreted for these purposes as within the last two-week period. In other words, the plant must contain all instruments filed with the county clerk prior to or on the day which is two weeks (or 14 calendar days) before the day of the plant test. [NOTE: Because of the currentness test, it is essential that the *exact date* the test is conducted be included on the abstract plant worksheet.]
  - c. Probate and divorce records are often omitted from abstract plant indices. Test instruments should include one of each. As for divorce records, the minimum acceptable for a legal plant is an index including names of parties and related cause numbers. These must be obtained from the district clerk's office.

- d. Filing dates of test instruments should be selected so that "down to date" determination of the plant can be made and a reasonable chance for discovering any holes in plant records exists. In other words, filing dates should be selected randomly with a "shotgun" pattern throughout the required 25 years that records must be maintained. It is important to test *both* the geographic and alphabetic indices for currentness since some agents have been known to keep the geographic indices up-to-date but not the alphabetic indices.
  - e. In testing the geographic indices of the plant, test instruments should be a mixture of property descriptions by lot and block for subdivisions and property descriptions by survey for acreage tracts.
  - f. Only the filing date and property description or alphabetical name should be given to the agency. It is left to agency personnel to locate the proper instrument from that information.
  - g. Copies of both the information for the records selected and the documentation provided by the agency should be retained and cross-referenced as part of the work papers.
4. Escrow Accounts, Internal Controls and Procedures, Guaranty Files, Invested Escrow Accounts, Operating Accounts, Statistical Reports and Rebating  
Findings in each of these areas must be included in the body of the audit report. Standard language to use when applicable has been developed and is available in another document.
5. Other Areas  
During the course of an audit, it may become evident that additional field work not included as part of the normal audit program needs to be done. If this is the case, simply include additional sections in the report for these areas.

C. ACKNOWLEDGMENT

This is an acknowledgment section which closes the report. It acknowledges the courtesy and cooperation of the agent and the agent's employees. The courtesy clause, of course, is only included when applicable. The auditor signs the report.

D. AUDIT WRAP-UP

- 1. Review work as necessary with your Director or Assistant Director.
- 2. Conduct and document an EXIT INTERVIEW with management. Inform management that the final report will be mailed along with a transmittal letter from Austin. Tell management that the report is not an open record. They may share it with an underwriter or anyone else if they so choose, but this office considers it a confidential record and will not divulge the results of the audit to anyone except the agent.

Because management may ask for specific instances of your findings, it is very important that workpapers are kept well organized and numbered as you conduct the field work. Violations should be recorded and cross-referenced as they are noted.

Be sure to give management a chance to ask questions at the exit interview. You may give management a copy of each of your violations pages showing bank account numbers or guaranty file references. *[CAUTION: Make sure agency management understands that anything given at the exit interview does not constitute the final word. Be sure to tell them that TDI staff in Austin may choose for whatever reason to leave out some of the exceptions or that additional ones could be included in the report after your workpapers have been reviewed.]*

DO NOT, repeat, DO NOT make *any* assertion as to what will happen as a result of the audit. If management is insistent about wanting information as to what will happen next, tell them all regulatory and disciplinary decisions are made in Austin. Tell them the transmittal letter will contain information in this regard. After the transmittal letter is received, the agent is encouraged to call Austin if further questions exist.

3. Prepare a rough draft of your report and save on n:\Title Exams\auditrpts to be accessed by the Austin office or put it on a diskette. Organize the workpapers to be consistent with the "Index to Audit Workpapers". Make absolutely certain that all workpapers are referenced and cross-referenced properly and clearly. All reference notations should be made with red pen.
4. Mail the workpapers (and diskette, if applicable) to Austin. [Auditors based in Austin will deliver workpapers directly to the office.]
5. Once the final report is prepared in Austin, the auditor will receive two copies for signature. A draft copy of the proposed transmittal letter will also be included for the auditor's information and comment.
6. When the signed reports are received back in Austin, one will be retained in Title Examinations files, and the other will be sent with the transmittal letter to the agent. The audit will then be considered complete.