BEFORE THE NEW MEXICO OFFICE OF SUPERINTENDENT OF INSURANCE

IN THE MATTER OF THE 2024 ANNUAL ESCROW COMPLIANCE PROCEDURES (AGREED UPON PROCEDURES) REPORTS	))))	**Docket No.TEMP 2024-002**

ORDER REQUIRING SUBMISSION OF 2024 ANNUAL ESCROW COMPLIANCE PROCEDURES (AGREED UPON PROCEDURES) REPORTS

THIS MATTER comes before the New Mexico Superintendent of Insurance ("Superintendent") upon the Superintendent's own motion, pursuant to the statutory mandates of the Title Insurance Law, Sections 59A-30-1, *et seq.* NMSA 1978 and in accordance with the Title Insurance Rules, 13.14.1 NMAC, *et seq.* The Superintendent, being fully informed and advised in the premises, hereby issues this Order.

1. Pursuant to Section 59A-30-4 NMSA 1978, title insurers and title insurance producers shall operate in New Mexico under the control and supervision of the Superintendent, and no title insurer or title insurance producer shall collect any premium, issue any title insurance policy or agency agreement, or reinsure any portion of the risk assumed under any title insurance policy, other than in conformance with the New Mexico Title Insurance Law and rules and regulations adopted by the Superintendent as authorized by the New Mexico Title Insurance Law.

2. Pursuant to Section 59A-4-3 NMSA 1978, the Superintendent may direct an inquiry to any person subject to supervision under the Insurance Code with respect to any transaction or matter within the scope of such supervision. Upon receipt of the request, the person shall promptly furnish to the Superintendent requested information in possession or control of such person. If so specified by the Superintendent, the requested information shall be furnished under oath.

3. Title 13, Chapter 14, Part 4 NMAC establishes requirements for title insurers and title insurance agencies and agents who provide escrow services, and the rules protect parties to transactions who deposit funds with title insurers or agents. Rules 13.14.4.8, 13.14.4.9, and 13.14.4.10 NMAC specify the requirements for providing escrow services, keeping books and records, and accounting procedures and internal controls.

4. Section 11 of 13.14.4 NMAC requires engagement of an independent certified public accountant who is in good standing to certify the procedures required by OSI. Every title agent shall therefore engage at their own expense an independent certified public account in good standing to perform an Annual Escrow Compliance Procedures ("AECP") engagement covering the required compliance procedures and the guidance issued by OSI.[1] A copy of the guidance can be found on the OSI website, at: http://www.osi.state.nm.us.

5. The certified public accountant shall provide the title agent with an adequate number of reports in sufficient time to allow the title agent to review them and submit them to the New Mexico Office of Superintendent of Insurance ("OSI") by May 15, 2024.

6. The title insurance agent shall submit an electronic copy of all reports via email to: Title.Insurance@osi.nm.gov. The AECP (i.e., the AUP) reports and all notarized affidavits must be in portable document format (PDF).

7. Pursuant to Section 59A-1-18 NMSA 1978, if no other monetary penalty is expressly provided for, an administrative penalty may be assessed for violations of the Insurance Code. The administrative penalty shall not be over five-thousand dollars ($5,000) for each

[1] In some prior dockets involving the same annual reporting called for in this Order, the term "Agreed Upon Procedures" was used in place of "Annual Escrow Compliance Procedures." The latter is the more correct term, because it relates more directly to the requirements set forth in the Title Insurance Rules. For purposes of this Docket, those terms (abbreviated "AECP" and "AUP") shall be interchangeable.

violation, except that if the violation is found to be willful and intentional, the penalty may be up to ten thousand dollars ($10,000) for each violation. Every administrative penalty shall be imposed by written order of the Superintendent made after hearing, held as provided in Chapter 59A, Article 4 NMSA 1978.

8. Reports that do not meet the requirements set forth in this Order shall be considered incomplete and marked as not received. Original reports will not be accepted. Any reports not submitted to the OSI in accordance with this Order shall be deemed to be incorrect and shall be returned to the submitter, who may become subject to a penalty of up to five hundred dollars ($500) for violation of this requirement.

9. The OSI will not grant filing extensions.

IT IS THEREFORE ORDERED:

A. All title insurance agents shall ensure that all 2024 Agreed Upon Procedures (compiled from 2023 data in accordance with the statutes and rules cited in this Order) are received in full at OSI by May 15, 2024.

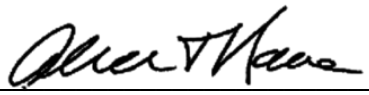
B. Agreed Upon Procedures received at OSI after May 15, 2024 shall be delinquent and may be subject to penalties of up to five hundred dollars ($500.00) per day. Additional penalties may be imposed in accordance with ¶¶ 7 and 8 of this Order.

C. Instructions, forms, and guidance for completing the reports may be obtained at http://www.osi.state.nm.us.

D. The OSI Office of Legal Counsel shall upload this Order on the OSI Title Rates and Rules Newsletter and ensure this Order is sent out as large volume correspondence to all title licensees listed in the current State Based System (SBS). Copies of this Order shall be served on all persons listed on the attached Certificate of Service.

DONE AND ORDERED this 23rd day of January, 2024.

SUPERINTENDENT OF INSURANCE



ALICE T. KANE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing *Order Requiring Submission of 2024 Agreed Upon Procedures* was sent via electronic mail to the individuals listed below on this 23rd day of January, 2024.

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BY: Jennifer Romero

Jennifer Romero, Law Clerk
Office of Legal Counsel, OSI