



## Texas Department of Insurance

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Procedural Rule P-53 became effective on April 1, 2004. In the weeks leading up to its effective date, and in the weeks immediately following, I attempted to answer individual questions about my reading of the rule that were specific to the fact situations described to me. As the issues have crystallized, as the email exchanges have been passed around and in some cases, either misapplied or misinterpreted, without regard to the nuances and subtleties of particular fact situations, I have developed the following responses to frequently asked questions, arranged by topic, that I hope will clarify some of these issues. Check our website ([www.tdi.state.tx.us](http://www.tdi.state.tx.us)) from time to time for updates.

To the extent the following responses differ from prior individual emails, these responses reflect current analysis of the specific issue related based upon the submitted question. Even having said that, these responses are not official pronouncements of the Department and do not constitute legal advice.

Robert R. Carter, Jr.  
Deputy Commissioner-Title  
May 19, 2004

When used below, the term "title companies" means any Authorized Person or Affiliate within the meaning of Procedural Rule P-53.

### **Under what circumstances may a title company waive or discount escrow fees?**

TDI does not presently promulgate an escrow fee. P-53 neither requires nor prohibits the waiving or discounting of escrow fees. If you are waiving or discounting **all** escrow fees, this should not, in and of itself violate P-53. Nevertheless, the selective waiving or discounting of an escrow fee, either for particular producers or **during a particular time period**, could be a thing of value in violation of P-53.

### **Under what circumstances may a title company provide courier services for the parties to the transaction?**

As noted in the Minimum Standards set forth in Section V of the Basic Manual, if there are charges shown on the closing statement for overnight mail service, messenger service, copies of documents, recording fees or tax certificates, these charges should be actual expenses or the best reasonable estimates of charges that must be made prior to closing and not arbitrary or uniformly charged amounts. Charges for general overhead expenses such as in-house labor,

utilities, taxes, business supplies and equipment are prohibited as settlement charges. Providing free courier, delivery, and messenger services necessary to the closing of the transaction is not prohibited by P-53 (for example, delivery of the receipted earnest money contract). However, providing these services to subsidize a producer involved in a closing, or in a manner that has the effect of subsidizing a producer (for example, free courier delivery of commission checks) would constitute a P-53 violation.

### **May title companies courier commission checks?**

Title companies should not subsidize or defray the costs of a producer. Providing producer commission checks by regular mail would not be prohibited by P-53. However, courier delivery or overnight delivery, if desired by the producer, should be the responsibility of the producer.

### **May a title company provide listing packets?**

Depending on the market, a "listing packet" means different things to different people, from no more than a copy of a deed to a package consisting of restrictions, easements, liens, and other encumbrances. If it has value, and you are providing it to a producer, then it is a violation of P-53. We will use a de minimis standard in evaluating these practices. You are reminded that a Title Commitment should not be issued until there is a bona fide order for a title policy.

### **Under what circumstances may a title company participate in fundraisers?**

Title companies may purchase advertising rights and buy tickets at fundraisers such as golf tournaments, fight nights, and bowling nights if the proceeds raised are going to a legally recognized charity such as a 501(c)(3) corporation. Checks should be made directly to the charity. Tickets purchased by title companies should not be provided to producers unless the producers reimburse the title companies for the fair market value of the ticket. Auditable records should demonstrate or prove the reimbursement was made to the title company by the producer in a timely fashion prior to the date of the event.

If funds are being raised for a producer or a producer organization, even if it is a non-profit producer organization, the title agent should pay no more than the fair market value for advertising or event tickets. Tickets purchased by title companies should not be provided to producers unless the producers reimburse the title companies for the fair market value of the ticket. Auditable records should demonstrate or prove the reimbursement was made to the title company by the producer in a timely fashion prior to the date of the event.

### **Does P-53 apply to fee attorneys?**

P-53 applies to fee attorneys. Regulating the way legal practices are marketed is not our objective, but the fee attorney must maintain auditable records demonstrating that the marketing efforts related to the business of title insurance comply with P-53.

### **Are office parties allowed?**

It is a violation to assist a producer with its party or open house; however, a title company may host its own annual party or open house to advertise its own business, but not more than one party per office per year. De minimis standards will apply. The invitation list should not be restricted to producers.

### **How are de minimis expenditures treated?**

It is not the objective to exhaust Enforcement resources on de minimis items such as standard writing pens and coffee mugs. As far as producers go, anything more than the equivalent of one normal business lunch for up to two guests (individuals) is not de minimis. We will also consider the number and frequency of such expenditures in determining the appropriate enforcement action. Title companies should not sponsor, defray the cost of, or supply food for breakfast meetings, luncheons, or dinner meetings for producers or producer groups.

### **What about pre and post P-53 activity?**

For activities expensed or supplied before the adoption of P-53, we will consider and evaluate several factors in determining whether to refer a case to the Legal Division. These factors include, but are not limited to: amount of expense, dates of payments, nature of activity, and evidence demonstrating attempts to comply. You should maintain auditable records proving that the expense was funded before February 5, 2004 and any good faith attempts you have made to come into compliance with P-53. Tickets to sporting and other entertainment venues, whether purchased by title companies before or after February 5, should not be provided to producers unless the producers reimburse the title companies for the fair market value of the ticket. Auditable records should demonstrate or prove the reimbursement was made to the title company by the producer in a timely fashion prior to the date of the event.

### **Is advertising allowed?**

P-53 clearly prohibits a title company from advertising any particular real property or group of properties individually or jointly with a Producer. You may not provide printing services. You may pay no more than fair market value for an ad for your title company in a Producer publication, and it must be clearly separate from any advertising by a Producer for its properties. You may pay no more than fair

market value for a table or booth at a producer's convention event if the table or booth is used to advertise your business.

**Under what circumstances can a title company provide continuing education?**

P-53 prohibits title companies from providing free mandatory CE to real estate agents and other producers. Title companies must charge a fair market rate for mandatory CE. However, P-53 does not prohibit title companies from providing educational seminars about title insurance, loans and mortgages, laws and legislation and related matters. Title companies should not pay for food or refreshments at seminars.

**How do I file a complaint?**

If you believe a competitor is violating Rule P-53 contact us at 512-322-3482 and ask us for a title insurance complaint form. Fill out the form completely and provide supporting documentation. Because many P-53 questions will turn on the facts of a particular case, include as many facts, dates, names, and addresses as you know. Be specific about what you think the violation is and why.