

Oregon Division of Financial Regulation Bulletin No. DFR 2020-2

TO: All Title Companies

DATE: January 16, 2020

RE: Title companies offering continuing education classes in compliance with OAR 836-080-0305 to 836-080-0370

Purpose

The purpose of this bulletin is to provide guidance to title companies offering continuing education classes to intermediaries on how to comply with the title company marketing rules under OAR 836-080-0305 to 836-080-0370 (Rules).

Authority

- OAR 836-080-0305 to 836-080-0370

Definitions¹

“**Intermediary**” means a person described in OAR 836-080-0310(2) and includes a person who:

- Acts as an agent, broker, representative or attorney in fact or at law of a person who buys or sells an interest in real property, or who lends or borrows money secured by an interest in real property;
- Buys, sells or exchanges interests in real property;
- Develops or subdivides real property;
- Builds residential or commercial structures on real property;
- Makes loans secured by interests in real property;
- Auctions the sale of real property;
- Accommodates or facilitates exchanges in real property; or
- Provides real property transaction settlement services.²

“**Net cost to the title company**” means the actual costs directly incurred by the title company to give a thing of value to an intermediary, less any money received by the title company from an intermediary as payment or reimbursement for the thing of value within 30 calendar days after the intermediary received the thing of value, except for the following costs:

- (a) Fixed operating costs;
- (b) Labor costs; and

¹ Definitions for the following terms are provided under OAR 836-080-0310 and restated below.

² Intermediaries also include: 1) An owner, director, officer or employee of an intermediary; 2) An individual who resides in the same household as an intermediary; and 3) A trade association of intermediaries. Intermediaries do not include the owner, director, officer or employee of the title company. See 836-080-0310.

(c) Reasonable compensation for the use of an employee's private motor vehicle.³

“**Thing of value**” means anything that has a monetary value.⁴

Background

Title Company Marketing Rules

The Rules were adopted by the Department of Consumer and Business Services to define certain fair trade practice standards for title companies and to regulate the marketing activities of title companies involving intermediaries.⁵

Title companies are generally prohibited from giving a thing of value to intermediaries unless it falls under one of the exceptions listed in the Rules.⁶ A thing of value provided under one of the exceptions also must not exceed the monetary limit set in the Rules for that exception. The monetary limits are automatically adjusted each year based on inflation and published on the Division of Financial Regulation (DFR) website:

<https://dfr.oregon.gov/business/licensing/Pages/monetary-limits-title-companies.aspx>

For illustrative purposes, the 2020 adjusted monetary limits are used in the examples and tables in this bulletin.

Two commonly used exceptions are those for business development activities and miscellaneous things of value. The Rules provide that:

Business Development Activities - A title company may give a thing of value to an intermediary in connection with an activity sponsored only by the title company if the net cost to the title company is \$130.63 or less per individual attending,⁷ when five or fewer individuals actually attend and when one of the individuals is an employee of the title company.⁸ When there are six or more attendees, the monetary limit is \$17.41 per attendee.⁹

Miscellaneous Thing of Value - A title company may give a thing of value that does not meet the definition of any other exception if the net cost to the title company is \$3.46.¹⁰

Continuing Education Training

Some title companies provide continuing education training to intermediaries in addition to their own employees. These trainings are provided in a variety of formats and include in-person

³ OAR 836-080-0310(4).

⁴ OAR 836-080-0310(5).

⁵ OAR 836-080-0305.

⁶ OAR 836-080-0315.

⁷ \$130.63 is the adjusted monetary limit for 2020.

⁸ OAR 836-080-0325(1).

⁹ OAR 836-080-0325(2). \$117.41 is the adjusted monetary limit for 2020.

¹⁰ OAR 836-080-0320. \$3.46 is the adjusted monetary limit for 2020. Additional restrictions apply to miscellaneous things of value. See 836-080-0320.

training, live presentations provided over video or teleconference, and pre-recorded videos that may be viewed on-demand.

Guidance to Title Companies

Determining Which Monetary Limit Applies

Continuing education training provided to intermediaries is a thing of value, and the net cost to the title company must not exceed monetary limits set in the Rules. Continuing education training may be considered a business development activity under OAR 836-080-0325(1) and (2) or a miscellaneous thing of value. The parties sponsoring the training, the format in which the training is provided, and the number of attendees may determine which monetary limit applies.

In order for an event to qualify as a business development activity under OAR 836-080-0325(1) and (2), it has to be:

1. An activity;
2. Sponsored only by the title company; and
3. Attended by an employee of the title company.

A training that is sponsored or cosponsored by an intermediary does not qualify as a business development activity under OAR 836-080-0325. Any thing of value a title company provides, including the issuing of certificates must fall within the limit for miscellaneous things of value under OAR 836-080-0320.

In-person and live trainings sponsored only by the title company delivered via video or teleconference may qualify as a business development activity under OAR 836-080-0325(1) or (2) and are subject to the monetary limits provided under those sections of the Rules. Pre-recorded videos do not qualify as a business development activity, because they are not “activities” within the context of the Rules. Pre-recorded videos must not exceed the monetary limit for miscellaneous things of value under OAR 836-080-0320.

The net cost to the title company for providing the training should not exceed the following limitations.

Training Type	Exception Type	2020 Monetary Limit	
Live in-person training	Business Development Activity OAR 836-080-0325	5 or fewer attendees: *	\$130.63 per attendee
		6 or more attendees:*	\$17.41 per attendee
Live video or teleconference	Business Development Activity OAR 836-080-0325	5 or fewer attendees: *	\$130.63 per attendee
		6 or more attendees:*	\$17.41per attendee
Pre-recorded video	Miscellaneous Thing of Value OAR 836-080-0320	\$3.46 per individual	

* Number of attendees includes title company employees providing the training.

Calculating Net Cost to the Title Company

The net cost of providing continuing education training must be within the applicable monetary limits. Net cost is calculated by taking the actual costs directly incurred by the title company in producing and delivering the training and subtracting any money reimbursed by the intermediary.¹¹ Net cost does not include:¹²

- Fixed operating costs;
- Labor costs; or
- Reasonable compensation for the use of an employee's private motor vehicle.

The following expenses may be part of the net cost if they are incurred primarily for training intermediaries and not part of a title company's fixed costs:

- Materials or items distributed to attendees;
- Food or beverages provided to attendees;
- Facilities rented specifically for the training;
- Software licenses and other technology costs necessary to provide the training; and
- Cost of obtaining certifications necessary to provide continuing education credits.

Expenses that are part of a title company's fixed operating costs do not count against a title company's net cost. Fixed operating costs are those incurred in the title company's regular course of business and not primarily for providing things of value to intermediaries. Title companies claiming that an expense related to providing a training is a fixed operating cost, and not part of the net cost, should be able to demonstrate the purpose for which the cost was incurred.

Civil Penalties

Failure to comply with the Rules or other provisions of the Insurance Code may result in an order to cease and desist¹³ and civil penalties of up to \$10,000 per violation.¹⁴

Examples

Example 1: A title company hosts an all day, in-person training at its office for four intermediaries. The course is taught by a title company employee. The title company spent \$150 on producing binders of course material, lunch, snacks, and beverages for all of the participants.

- This training qualifies as a business development activity with five or fewer participants under OAR 836-080-0325(1). The monetary limit in 2020 for this type of activity is \$130.63 per attendee.
- The net cost to the title company is \$150. The facility costs are part of the title company's fixed operating costs and would not be included in calculating the net cost.
- There are five attendees (the title company employee counts as an attendee). The cost per attendee is \$30 and complies with OAR 836-080-0325(1).

¹¹ Reimbursement must be provided within 30 days of the training.

¹² OAR 836-080-0310(4).

¹³ ORS 731.252(1).

¹⁴ ORS 731.988(1).

Example 2: A title company purchases video equipment and a license for virtual conference software that it regularly uses to train its own employees. There is no limit to the number of individuals that may log in to use the platform. As part of its marketing strategy this year, the title company decides to start offering training to intermediaries for continuing education credit with the Oregon Real Estate Agency. The title company pays a \$300 application fee to become a certified continuing education provider. Later that year, the title company hosts a live webinar training event in which 48 intermediaries logged in remotely and participated via video conference. Two title company employees delivered the training.

- This training qualifies as a business development activity with six or more participants under OAR 836-080-0325(2). The monetary limit in 2020 for this type of activity is \$17.41 per attendee.
- The video equipment and software license is a fixed operating cost, because the expense was incurred primarily to train and facilitate meetings for title company employees.
- The title company decided to become a certified continuing education provider primarily to provide a thing of value to intermediaries. The \$300 application fee is part of the net cost of providing the training.
- There are 50 attendees, and the net cost per attendee is \$6 and complies with OAR 836-080-0325(2).

Example 3: A title company obtains a license to use a virtual training software that costs \$1,000 per year and allows for 100 log-ins. As part of its employee training plan for the past several years, the title company has needed 75 log-ins. This year, the title company plans to offer training to intermediaries that will require additional log-ins exceeding the allotted number under their licensing agreement. The software vendor also offers an upgraded software package for an additional \$200 that allows for a total 500 log-ins. The title company upgrades its license and hosts two trainings for intermediaries that year with 25 and 50 attendees respectively.

- Both trainings offered to intermediaries qualify as a business development activity with six or more participants under OAR 836-080-0325(2). The monetary limit in 2020 for this type of activity is \$17.41 per attendee.
- The title company spent a total of \$1,200 on training software. The base software license is a fixed operating cost, because the expense was incurred primarily to train employees. The title company decided to upgrade its software license in order to provide online training to intermediaries. The net cost is \$200.
- In the two business development activities in which the training software was used, there were 75 total attendees. The net cost per attendee is \$2.66 and complies with OAR 836-080-0325(2)

Example 4: A title company uses virtual training software that allows individuals to log in, view a pre-recorded video training, take a quiz, and print off certification that they have completed the course. The title company pays \$4 for each individual that uses this service. The title company provides access to this service to 25 intermediaries.

- This training does not qualify as a business development activity under OAR 836-080-0325, because it is not an activity sponsored by the title company.
- This training would qualify as a miscellaneous thing of value under 836-080-0320. The monetary limit is \$3.37 per individual.

- The net cost to the title company is \$4 and exceeds the monetary limit.

Summary

- Continuing education trainings delivered to intermediaries are a thing of value subject to the title company marketing rules under OAR 836-080-0305 to 836-080-0370.
- A live training, whether delivered in-person or via video or teleconference, may qualify as a business development activity exception if it meets all of the criteria under OAR 836-080-0325(1) or (2).
- A pre-recorded training does not qualify as a business development activity under OAR 836-080-0325, but may qualify as a miscellaneous thing of value if it meets all of the criteria under OAR 836-080-0320.
- The net cost to the title company for providing the training must fit within the monetary limits under the Rules. The net cost consists of the actual cost of providing the training, but excludes fixed operating costs, labor costs, and reasonable compensation for the use of an employee's private motor vehicle.
- Expenses such as those for facilities, video equipment, and software may be a fixed operating cost if they are incurred primarily for the title company's regular course of business. These same expenses would be part of the net cost subject to monetary limits if they are incurred primarily for providing training to intermediaries.

This bulletin is effective upon issuance.



Andrew Stolfi
Administrator/Insurance Commissioner
Division of Financial Regulation



Date