## DISCIPLINARY REGULATIONS APPLICABLE TO ELPOC TITLE 15

## REGULATION 101. DEFINITIONS

The definitions in ELPOC 1.3 apply to these Regulations. In addition, the following definitions shall apply:

(a) The "auditor" shall mean the person or accounting firm conducting the audits and examinations specified in ELPOC Title 15.

(b) "Examination" shall mean a review and testing by the audit of the internal controls and procedures by an LPO or Closing Firm to receive, hold, disburse and account for money and property in which the client or other person has an interest using generally accepted auditing standards, to the extent they apply, without, however, making outside confirmations. In order to conduct such review and testing, the auditor shall have access to all of the internal books and records kept by the LPO or Closing Firm which comprise the LPO's or Closing Firm's financial records showing financial transactions involving the receipt of client's funds for fees, costs, or other purposes, either from the client or third persons and all expenditures by the Closing Firm or LPO for clients or third persons and all distributions to the LPO or LPOs including but not necessarily limited to all journals, ledgers, books of accounts, canceled checks, deposit slips, bank statements, check registers, cash accounts, receipts, correspondence, records of accounts receivable, income and expense statements, balance sheets, tax returns of all types, federal, state, county, and city excepting, however, income tax returns.

(c) "Audit" shall encompass "examination" but in addition may include positive or negative confirmation from external sources.

## REGULATION 102. PERSONS AUTHORIZED TO CONDUCT AUDITS

Audits shall be conducted by an auditor or auditor(s) provided by the Board.

## REGULATION 103. EXAMINATION AND AUDIT REPORTS

(a) The auditor shall furnish a written report of each examination or audit to the Board.

(b) The report shall contain the date of the audit or examination, the name of the Closing Firm or LPO, and a statement of the scope of the examination or audit. In respect to each examination, it shall include a statement to the effect that either 1) as a result of the examination, an audit or further examination is indicated, or 2) during the course of the examination, the auditor has not observed anything which would indicate a need for further examination or audit at this time. In respect to each audit, the report shall state either 1) as a result of the audit, the auditor concludes that LPORPC 1.12A and B have not been complied with (stating the particulars), or 2) as a result of the audit, the auditor has not observed anything which would indicate LPORPC 1.12A and B have not been complied with. The auditor shall further state an opinion, as to whether the LPO or Closing Firm has cooperated as required by ELPOC 15.2, giving the particulars if lack of cooperation is claimed.

(c) Upon request by the Chair, the auditor shall make available the working papers in respect to particular examinations or audits, for review by the Board and shall consult with the Board in respect to particular examinations and audits.

(d) Upon conclusion of the examination or audit, the auditor shall make available to the LPO or Closing Firm a copy of the audit report.

(e) The auditor shall preserve inviolate all confidences and secrets of clients of the examined LPO or Closing Firm. No client name or information which would permit the identification of a particular client shall be revealed in the working papers or the report of the auditor, except that the name or names of clients who have filed complaints with the Board may be released.

(f) When the audit is concluded, if it is determined pursuant to Regulation 104 that no further investigation, examination or action is appropriate, the Board's copies of the audit report, working papers, or other materials relating to the audit shall be destroyed, except that the Board shall maintain a record showing the identity of any LPO or Closing Firm audited and the dates of the audit to ensure that the restrictions of Regulation 105 are complied with.

## REGULATION 104. DETERMINATION THAT FURTHER EXAMINATION AND AUDIT OR OTHER ACTIONS ARE WARRANTED

(a) The Chair or a delegate shall review all reports of the auditor. After such review and upon further investigation, which the Chair may direct, and after such consultation, if any, as the Chair deems appropriate with the Board, the Chair shall make such order in respect to further examination and audit as the Chair deems appropriate, consistent with .ELPOC 15.1 In addition, the Chair may order other actions by the LPO and Closing Firm as are necessary to ensure that the LPO's or Closing Firm's handling of client funds complies with the requirements of the LPORPC.

(b) **Auditor's Opinions Advisory Only**. The opinions expressed in the report of the Auditor shall be advisory only. They shall not in and of themselves constitute findings of fact in any disciplinary proceedings against any LPO unless so stipulated by the LPO or LPO's counsel.

## REGULATION 105. METHOD OF SELECTION OF LPO AND CLOSING FIRMS TO BE EXAMINED

(a) At such time and from time to time as the Board determines, random examination of LPOs or Closing Firms may be conducted. Procedures shall be established by the Board for the selection of the LPOs or Closing Firms to be examined which 1) will utilize the principle of random selection, and 2) will distribute the examinations among the congressional districts of the state substantially in the ratio that the number of LPOs in each district bears to the total number of active LPOs in the state. If the number drawn is that of an LPO who is an employee of a Closing Firm, the Closing Firm shall be examined. If the number is that of an active LPO who is an independent business owner, the active LPO's records shall be examined. If the number is that of an LPO who, either as an individual or as a Closing Firm employee, has been audited in the twenty-four (24) months immediately preceding the drawing, the Chair may in the Chair's

discretion excuse the LPO or Closing Firm from examination.

(b) Upon consent of an active LPO, the LPO's books and records or those of a Closing Firm may be examined even though the active LPO's number has not been selected randomly.

(c) The Chair may at all times upon the receipt of information that a particular LPO or Closing Firm may not be in compliance with LPORPC 1.12A and B authorize an examination.

## REGULATION 106. CONTENTS OF LPO DECLARATION

Annually, the Board shall mail to each active LPO, a written declaration to be completed and delivered to the Board on or before July 1 of that year. The declaration shall be comprised of two parts. Part One shall be completed and signed by each active LPO. Part Two shall be completed and signed by the individual who manages the trust accounts(s) for the Closing Firm, on behalf of the Closing Firm and all LPOs employed in the Closing Firm. Parts One and Two each shall be separately signed and verified by the signer under penalty of perjury and shall require disclosure of the following information:

**Part I - LPO Verification**

1. Name, current address and telephone number of the LPO.
2. Whether the LPO is actively providing services authorized by APR 12(d).
3. If the answer to (2) is no, whether the LPO is nonetheless engaged in any LPO activities which involves or might involve the handling of client's funds or property.
4. Whether the LPO or Closing Firm maintains identifiable bank account(s) within the state for the deposit of funds of clients and third persons and a record keeping system to record funds, securities and other properties of clients and third persons coming into the LPO's or Closing Firm's possession (to be answered by all LPOs unless the answers to both (2) and (3) are "no").

**Part II - Account Information Verification**

1. The name of the bank(s) and branch(es) and account number(s) where the separate identifiable bank accounts are maintained as the depository (or depositories) for client funds.
2. Whether the accounts identified in "1" above are maintained in the manner specified in LPORPC 1.12 A and B, and whether all clients' funds to the extent required by LPORPC 1.12 A and B, are kept therein.
3. Whether all funds, securities, and other properties of clients coming into the LPO's or Closing Firm's possession are held in the manner specified in LPORPC 1.12A and B and whether records in respect thereto are maintained in the manner specified in LPORPC 1.12A and B .
4. That the signatories acknowledge they are subject to examination and audit under ELPOC Title 15 and these regulations to verify compliance with LPORPC 1.12A and B.