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Bulletin 158

Prohibition on the Use of Goods and Services as Gifts to Induce Title Insurance Business

This Bulletin is directed to all title insurers and title insurance producers (collectively, Title Companies). The Department of Insurance (Department), through the newly-created Title Insurance Division, has become aware of the need to clarify how Indiana's laws, read in relation to the federal Real Estate Settlement Procedures Act (RESPA) – 12 U.S.C. § 2601, *et. seq.* – apply to current marketing practices.

Some title companies have historically engaged in the practice of paying real estate brokers, real estate salespeople, mortgage brokers, builders, and other settlement service providers as defined by RESPA, 12 U.S.C. §2602(B)(3) (collectively, Settlement Service Providers) to secure their title insurance business. A variety of products, services, advertising, and sponsorships have been used as a pretense for the payment. If a Title Company pays or provides products, services, fees for unearned services, advertising, or sponsorships to a Settlement Service Provider as a pretense for payment for business, the Department considers that to be an illegal inducement to secure title insurance business. In addition to RESPA, Indiana law prohibits such activities – for example, see IC 27-1-15.6-1, *et. seq.*, IC 27-1-20-30, and IC 27-4-1-4.

The Department has identified the following practices, which can be considered a pretense for inducement of business:

- Printing or paying for the printing and/or dissemination of bulletins, flyers, postcards, labels, etc., for Settlement Service Providers;
- Furnishing or paying for the furnishing of office equipment (fax machines, mobile phones, copiers, etc.) to Settlement Service Providers;
- Providing or paying for mobile telephone minutes – including text messaging and Internet usage – for Settlement Service Providers;
- Providing to real estate brokers or real estate salespeople simulated panoramic home and property tours they can use to promote their listings;
- Providing or paying for gas cards to Settlement Service Providers;
- Providing or paying for food or beverages at events designed to promote the listings of real estate brokers and/or real estate salespeople;
- Paying advertising costs to advertise and promote the listings of real estate brokers and/or real estate salespeople;
- Paying Settlement Service Providers to fill out processing (order) forms;
- Paying continuing education fees for Settlement Service Providers;
- Paying for the cost of tickets to a sporting event.

This list is not exhaustive, nor is it intended to prevent Title Companies and others actually providing a good or service from being paid the reasonable value of that good or

service. The Department recognizes that the determination of reasonable value is fact-sensitive and will take each case on its merits.

Title Companies and those doing business with Title Companies are responsible for knowing all applicable laws and complying with them. Consequences for violations of this Bulletin include loss or suspension of one's license, restitution, and/or fines of up to $50,000 per act. Although the Department has limited jurisdiction over Settlement Service Providers who are not Title Insurers, the Department maintains an ongoing dialogue with other state agencies and will make referrals to the appropriate licensing agency if violations of Indiana law or RESPA are uncovered.

James Atterholt, Commissioner