An Investigation into the Use of Incentives and Inducements by Title Insurance Companies

October 2006

Washington State
Office of the
Insurance Commissioner

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www.insurance.wa.gov

EXHIBIT PD-1

Office of the Insurance Commissioner

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Title Insurance

From the consumer's point of view, title insurance differs greatly from other, more familiar kinds of insurance. For one thing, while automobile and homeowner insurance policies protect you from an event that may occur in the future, title insurance offers protection from claims that might have occurred in the past.

Most simply, title insurance is protection that you purchase against a loss arising from problems connected to the real estate that you are buying. The list of potential problems is long and varied. For instance, a forged signature on a transfer document, unpaid real estate taxes or other liens will cloud the title on a piece of property or a building. But regardless of whether there is a problem in the past or not, the bottom line is that, if you're buying real estate in Washington and using a commercial lender to finance the purchase, the lender will require you to purchase title insurance.

Yet, for even the savviest of insurance consumers, the purchase of a title insurance policy is just one more expensive step in the dizzying, convoluted and often confusing flurry of paperwork and signings that culminate in the closing of a home purchase. Consumers who normally shop around for their insurance and carefully compare prices, typically emerge from the closing on their new home holding an insurance policy that they know virtually nothing about.

Background

The title insurance market in Washington consists of a dozen carriers, ranging in size from regional companies to national affiliates. The market itself, while varying from region to region within the state, is dominated by four groups of affiliated companies who, combined, sell about 97 percent of the title insurance policies sold in Washington.

Title companies, in marked contrast to property, casualty, life and other traditional insurance carriers, do not market their products directly to the consumers who pay for them. Instead, the title insurance industry operates on what is termed a "reverse competition" model. Reverse competition means that title companies solicit business from the other major players in the home sale scenario – real estate agents and agencies, banks, lenders, builders, developers and others. Call them middlemen or go-betweens.

Reverse competition, as the term suggests, isn't a model that benefits consumers through market-driven forces. In fact, consumers are bypassed completely as title companies spend nearly all of their marketing budgets "wining and dining" real estate agents, banks, lenders, builders, developers and others in an effort to convince these middlemen to steer their home-buying clients to their companies for their title insurance needs. These incentives, which some might call inducements, are strictly limited and regulated by state law through the Office of the Insurance Commissioner.

The law – $25 in a 12-month period

Washington law, RCW 48.30.140 and 48.30.150 (see Appendix A), and regulations clearly prohibit title companies from providing anything of value in excess of $25 in a 12-month period to any person as an inducement, payment or reward for placing or causing title insurance business to be given to the company. There is nothing

confusing about the requirement: title companies are prohibited from providing anything of value in excess of $25 per person in a year.

Faced with reports of abuses in the industry, the Office of the Insurance Commissioner adopted a rule in 1988 and amended it in 1990 (see Appendixes B & C) in an attempt to curb illegal inducements. Despite these efforts, the industry seems to have become adept at skirting the law by creating new schemes and methods for providing inducements in order to obtain title insurance business.

The Colorado connection

During the summer of 2004, the Colorado Department of Insurance was in the midst of an investigation into marketing abuses within the title insurance market there when it uncovered a questionable scheme involving a number of large, national title insurance companies. Colorado authorities successfully lobbied the National Association of Insurance Commissioners to coordinate a multi-state survey of companies participating in this questionable practice. Here in Washington, the Office of the Insurance Commissioner joined the inquiry after it was determined that several of the companies under investigation were authorized to conduct business here.

Basically, the scheme involved title companies "purchasing" reinsurance policies from companies variously owned by builders, real-estate agents and lenders. Reinsurance is the practice of an insurance company spreading or transferring some of its insurance risk to a secondary insurer. Under the scheme uncovered in Colorado, the title companies would "purchase" reinsurance from builder-owned companies in return for title insurance business steered to the title company by the builder-owned entities.

Although reinsurance is an accepted business practice in the insurance industry, in this case, the reinsurance scheme did not meet even a basic, straight-face standard for several reasons:

- First, the reinsurance was not needed from a financial perspective, as the premiums paid for the reinsurance greatly exceeded the amount of risk being transferred.
- Secondly, the investigation disclosed that title companies paid premiums worth millions of dollars to the so-called reinsurance companies, yet the reinsurers never paid a single penny on a claim against the policies.

Washington policyholders reimbursed

While the investigation included title companies conducting business in Washington, investigators only found one such reinsurance arrangement here, and it only involved a handful of policies. Washington did, however, participate in the Colorado-led national settlement that made 592 policyholders eligible for more than $22,000 in reimbursements. (See Appendix D for details.)

As a result of the multi-state investigation, individual states, including Washington, launched their own investigations into questionable practices by title insurance companies. Other states included Colorado, New York and California. All of this activity ultimately drew the attention of the U.S. Congress, and in February of this year, U.S. Rep. Michael Oxley of Ohio requested an investigation of title companies

by the federal Government Accountability Office. A preliminary report was issued in April 26, 2006, (http://www.gao.gov/new.items/d06569t.pdf), and Congress held a hearing on the issue soon after.

The Washington state investigation

Washington's independent investigation was launched by the Office of the Insurance Commissioner after the agency continued to receive complaints and inquiries about title companies providing incentives and inducements to obtain business, despite state law and regulation to the contrary. It appeared this activity was on the rise, both in frequency and scope.

Executive summary

The 10-month investigation disclosed that the use of inducements and incentives by title companies to obtain title insurance business in Washington appeared to be widespread and pervasive. While some companies made no apparent effort to comply with state law and regulations, others were found to be at least attempting to comply with statutory requirements while nevertheless committing violations. The bottom-line conclusion is that violations occur throughout this industry, ranging from egregious breaches to relatively minor transgressions.

While there might not appear to be a clear connection between these illegal practices and a negative impact on consumers, the investigation clearly determined that this industry is rife with practices gone haywire. It is undeniable that these practices cost money, and it's clear that the consumer, who ultimately pays for the coverage, is the only source of money for these illegal expenses.

Based on the findings of the investigation, the Office of the Insurance Commissioner has developed recommendations and an enforcement plan to ensure that Washington's insurance-consuming public is protected from this illegal and inappropriate conduct, while fostering real competition to benefit consumers.

The investigation

In order to keep the investigation at a manageable size, the Office of the Insurance Commissioner targeted the major title companies operating in the greater Seattle metropolitan area comprised of King, Pierce and Snohomish counties. The investigation encompassed the branches of title companies in the target counties as well as title insurance agents. The primary investigative tool was a demand for company documents and records for an 18-month period that began on Jan. 1, 2004. (See Appendix E) The documentation included:

- Title company employee expense reports
- General ledgers

The investigation was initiated in August 2005 and concluded in June 2006.

A preliminary review of the information revealed that a disproportionate amount of the companies' annual expense for incentives and inducements was expended during the holiday season in the month of December 2004. Based on this finding, investigators made a secondary request for records from the companies, covering the month of December 2005. In part, this request was intended to determine if

the companies had modified their behavior after being put on notice that they were under investigation by the Office of the Insurance Commissioner.

Companies investigated

The following companies (with their principal geographical market for purposes of the investigation) comprised the agency's investigation:

Chicago Title Insurance Co. (King, Pierce & Snohomish counties)

Commonwealth Land Title Insurance Co.* (King, Pierce & Snohomish counties)

Commonwealth Land Title of Puget Sound* (King, Pierce & Snohomish counties)

Fidelity National Title Co. of Washington (King, Pierce, Snohomish & Clark counties)

First American Title Insurance Co. (King, Pierce & Snohomish counties)

Old Republic Title Ltd. (King & Snohomish counties)

Pacific Northwest Title Co. of Washington (King, Pierce & Snohomish counties)

Rainier Title Co. (Pierce County)

Stewart Title Co. of Seattle (King County)

Ticor Title Co. of Washington (Pierce County)

Transnation Title Insurance Co.* (King, Pierce & Snohomish counties)

** These three affiliated companies are grouped and treated as one – the LandAmerica Companies – for the purpose of this investigation since they intermingle use of their marketing resources to sell policies on behalf of all three companies.*

Materials reviewed

The agency's demand for records resulted in both hard copies and electronic versions of expense reports and general ledgers from the investigated companies. These records formed the basis for the agency's investigation.

Findings

The agency's extensive analysis of these records disclosed a clear pattern of inducements and incentives. Although details and form varied from company to company, it became apparent that the inducements and incentives represented similar patterns of behavior for all the companies. Generally speaking, all of the companies investigated used some or all of the following schemes in varying degrees to influence these middlemen (real estate agents, banks, lenders, builders, developers and others) who were in a position to steer title insurance business to them. (Some of these inducements are within requirements as singular events, but when totaled up in repeated instances over the course of a 12-month period, the violations were apparent.)

Co-advertising – In this scenario, the title company ostensibly pays for an advertisement in a publication, on a billboard or some other media. Most typically, this involves a real estate magazine that advertises homes for sale. The problem, however, is that the amount the title company pays is far in excess of the amount of space allotted to the title company's advertisement. In effect, the title company is underwriting a significant portion of the real estate agent's advertising costs in the publication.

Broker opens – These events are open houses intended to help familiarize real estate agents with specific properties that are being listed for sale. The listing real estate agent hosts the event which includes food and drinks, but the costs are paid by the title company which receives nothing of value in return from the arrangement other than the prospect of future title insurance customers.

Food and drinks – Title companies provide food at breakfast, lunch and dinner meetings with their associated middlemen, usually in the associate's offices. This incentive can range from a simple bag of donuts for a morning meeting, to an elaborately catered meal.

Educational classes – Real estate agents are required to take continuing education classes to maintain their licensing. Title companies will provide these classes, paying for the speaker, facility, food and drinks. Some title companies will charge participants for the class (although the fees rarely reflect the full cost), while others will provide the class at no charge.

Gifts – Title companies provide a wide range of gifts to these middlemen (those in a position to steer title insurance customers to them). These gifts range from nominal $5 coffee gift cards to much more expensive gifts and gift cards.

Golf – Rounds of golf were a commonly found incentive paid by title companies. These ranged from inexpensive municipal-type courses to more expensive, exclusive clubs.

Golf sponsorships, etc. – Title companies provide sponsorships at golf tournaments held for the middlemen and go-betweens. These sponsorships include gifts, prizes and supplies that cover a broad range in expense.

Party hosts – Title companies routinely host and pay for parties of all descriptions, at their own offices, the go-betweens' offices or restaurants and other facilities.

Ski buses – Title companies provide ski outings for their middlemen, including bus transportation, lift tickets, food and drinks. In some instances, the title company charged participants a nominal fee, but it rarely reflected the entire cost to the title company.

Shopping buses – Here the title company provides a bus, with food and drinks, to take middlemen on shopping forays.

Sporting events – Title companies provide complimentary tickets for the middlemen and go-betweens to attend major sporting events in the Seattle area, including Seahawks, Mariners, Huskies and Sonics games. These tickets can range from bleacher seats to the more exclusive luxury boxes and preferential seating.

Meals – Title companies picking up the tab for breakfasts, lunches and dinners, also known as "wining and dining," is far and away the most prevalently used incentive and inducement. These inducements range from inexpensive lunches costing just a few dollars per individual to expensive dining experiences costing thousands of dollars.

Professional organizations – Title companies pay for the monthly luncheon meetings of the Seattle King County Realtors Association.

Donations – Title companies often contribute food, gifts, money and auction items for middlemen at their charity events.

Summarized findings by company

This section offers representative summaries of each company's violations, and a subjective evaluation of the company's apparent efforts to comply with state laws and regulations, specifically, those that prohibit a company from providing anything of value in excess of $25 in a 12-month period as an inducement, payment or reward for placing or causing title insurance business to be given to the company.

Chicago Title Insurance Co.

A review of this company's records revealed that the company does pay some heed to the $25 limit. Yet, investigators found that the company repeatedly violated the limit on many occasions. The company often participated in co-advertising campaigns, paying the production costs and postage for flyers more than 150 times during the 18-month period. Those costs individually ranged from $100 to more than $4,300 each.

The company made extensive use of sporting tickets, including one Seahawk game for which it paid nearly $2,400 for 26 seats. Some of these events included the use of chartered buses for transportation.

The company spent thousands of dollars paying for food at hundreds of middlemen meetings and broker opens. The company sponsored golf tournaments, spending in excess of $3,000.

The company also hosted receptions and hospitality suites at conventions on three occasions, spending a total of more than $13,000.

The company ranks somewhere in the middle of the pack when its violation record is compared to other companies.

The LandAmerica Companies

(Commonwealth Land Title Insurance Co., Commonwealth Land Title of Puget Sound, and Transnation Title Insurance Company)

When it comes to marketing inducements and incentives to middlemen and go-betweens, the LandAmerica Companies share expenses.

These companies participated in the same schemes found throughout the industry. The companies made extensive use of co-advertising, gift cards, providing food and drinks at broker opens and meetings, paying for meals and giving away sporting event tickets.

The companies also paid more than $25,000 to a charter boat company during the 18-month period for services rendered to these middlemen and go-betweens.

The companies paid for many meals, occasionally exceeding the $25 per person limit.

Although there was ample evidence that the company violated rules and exceeded the statutory limit, the violations and their frequency were not as extensive as some of the worst offenders.

Fidelity National Title Co. of Washington

This company's behavior varied greatly from county to county. In King and Snohomish counties, Fidelity's behavior was very similar to other companies that violated the rule, but didn't approach the frequency and degree shown by some of the worst abusers. Pierce County, however, was another story.

In all three counties, the company made extensive use of gift cards, gift certificates, broker opens, prizes, food, meals, golf sponsorships and individual rounds, sporting event tickets and parties.

In Pierce County, however, the company appeared to be competing with First American and Ticor in giveaways, exceeding the $25 limit often and by big margins. The company paid for scores of broker opens, in excess of $100 more than 100 times, and upward of $300, $400 and $500 in many more instances, including one instance where the costs were nearly $1,500.

Meals accounted for many violations by Fidelity, including a dozen restaurant tabs ranging in costs from more than $300 to nearly $900.

Other violations included paying $580 for one real estate agent's tickets to a Mariners game. Fidelity also paid $560 in awards for one agency's top producers. It also hosted a ski bus, shopping bus and fishing trip.

While the company's King and Snohomish operations tended to operate closer to the intent of the law, albeit still in violation, the Pierce County offenses were similar in breadth and scope to those of the worst offenders identified during the investigation.

First American Title Insurance Co.

First American offers a prime example of how illegal inducements can help a company attain superior market share. First American, the worst offender in the investigation, has consistently been in the top two for market share since 1998, significantly ahead of the rest of the pack. While some of the companies whose records were examined during this investigation appeared to be making an effort to comply with the $25 rule, First American clearly ignored its obligation to the law. Some of the companies on the lower end of the scale committed in the neighborhood of 100 violations during the 18-month period under review. First American easily surpassed those numbers on a monthly basis.

Co-advertising is a primary tool for First American, and the company routinely paid more than $20,000 per month on this category of inducement, not including picking up the production costs and postage for flyers advertising real estate sales.

The company also spent $5,000 per month to co-advertise with one of its builder customers on billboards in the Pierce County area – the money paying for the inclusion of First American's name and logo on billboard. The name and logo are of such a size as to be barely readable from the street.

The investigation also disclosed that First American paid more than $23,000 for such co-advertising with a single King County real estate agent.

Other violations included gift certificates, golf sponsorships, broker opens, food and drink at meetings, and routinely catered meals that cost hundreds of dollars.

Tickets to sporting events were another incentive that the company used to a great extent. It spent more than $11,000 hosting two Sonics nights. The company paid $2,000 for a real estate agent's season tickets to the University of Washington football games. The company spent $7,000 to sponsor, provide food, drinks and parking for a "symposium" aboard a boat during the Seafair hydroplane races.

Other violations included sponsoring meetings, broker opens, ski buses and shopping trips.

All told, the company averaged in excess of $120,000 per month funding these activities and giveaways.

Old Republic Title, Ltd.

This company's records indicate that for the most part it made an effort, and succeeded in large part, in complying with the $25 limit. Three violations involved gift certificates and door prizes ranging up to $290. It also provided food and drink in excess of the $25 for broker opens, meetings and meals. One of its sales representatives paid more than $6,000 for "cocktails" during the 18-month period under review. The company also spent in excess of $3,000 hosting two Super Bowl parties.

Pacific Northwest Title Co. of Washington

The investigation disclosed that this company attempts to comply with the law, but as has been discovered with other companies, intentions don't necessarily translate into actions. A review of Pacific Northwest's records revealed that the company exceeded the $25 law on a significant number of occasions during the 18-month period. Most of these violations involved gift certificates, raffle prizes, and supplying food at broker opens and meetings. The company also spent more than $900 for a boat cruise for six real estate agents, and sponsored a shopping junket and a bus to a Mariners game.

The company participated in co-advertising, but on a much smaller scale than some of the other companies involved in the investigation.

The company's records indicated that it spends about $36,000 per month on giveaways, representing about 2 percent of its gross income.

Rainier Title Co.

When compared to the other title companies operating in Pierce County, Rainier Title Co. had the best track record and the least number of violations.

The company did, however, exhibit many of the same behaviors and participated in many of the same schemes that the investigation discovered are prevalent throughout the industry.

The company spent money on food for broker opens, gift cards, gift certificates, meals, golf tournaments and continuing education classes. With some exceptions, most of the violations were nominal transgressions of the $25 law. The company did pay for a boat cruise, Yakima wine tour and a night at the races. The company also bought tickets to a limited number of sporting events and a jazz festival.

Stewart Title Co. of Seattle

This is another company that demonstrated at least an intent to comply with the $25 limitation in the usual array of inducements, including meals, classes, meetings and broker opens. It didn't always succeed, as evidenced by its paying in excess of $100 for gift certificates. The company spent money on food, drinks, prizes and sponsorships at golf tournaments, including one instance where it paid $800 for a steel band to entertain participants. The company also participated in co-advertising and sponsored a bus trip to Leavenworth.

Ticor Title Co. of Washington

Ticor is one of the major offenders in the Pierce County market. Although much of the activity was within the $25 law, the company also exceeded that limitation, often in a big way. On ten occasions, it hosted meals that cost in excess of $1,000, including one instance where the restaurant tab was more than $3,300. The company regularly paid for food and drinks for broker opens, meetings, educational classes and other events. It paid one catering company nearly $30,000 during the 18-month period that the investigation covered. The company also made frequent use of bus outings to ski slopes, shopping centers and sporting events, as well as a boat outing that cost more than $4,600. The company supplied food, drinks, sponsorships and prizes for golf tournaments, including nearly $2,300 worth of cigars.

It also paid for co-advertising and gift certificates that violated the $25 law.

Conclusions

The Office of the Insurance Commissioner's review of title company records in King, Pierce and Snohomish counties clearly established that there are pervasive and widespread problems related to violations of laws governing incentives and inducements in the title insurance industry. Investigators found a common disregard for the laws governing the amount of money that can be expended to influence the placement of title insurance business with a title company. Investigators found that the degree of disregard ranged from blatant to embarrassed chagrin.

It is encouraging that some of the investigated companies recognized their complicity, even if their behavior failed to meet the letter of the law. Indeed, a significant amount of the illegal behavior, especially involving food and meetings, didn't breach the $25 limit by much in individual instances, but these violations occurred multiple times during the course of the 18-month period under review.

At the same time, however, the investigation also provided ample evidence that some of the major offenders view the law as little more than a nuisance standing between them and their ability to have business steered to them from their middlemen, go-betweens and associates in the real estate business.

Support for that conclusion arrived in the mail following the agency's second request for records covering December 2005. This follow-up request was made after a preliminary examination of the records showed that the companies were spending a disproportionate amount of their annual expense for incentives and inducements during the year-end holiday season. Investigators were curious to learn whether the companies had modified their spending behavior after being put on notice some months earlier that they were under investigation by the agency. The records from December 2005 showed virtually no difference from the previous December's spending patterns. Clearly, companies were not concerned that their likely use of illegal incentives and inducements was under review by the Insurance Commissioner.

Recommendations

Given the truly astonishing numbers of violations, and the companies' willingness to flaunt or simply ignore what they apparently perceive as a trivial law, the agency has developed a set of recommendations intended to help the industry recognize that it has a problem. Rather than commencing what surely would turn out to be an expensive enforcement effort to punish title companies for past wrongdoing, the Office of the Insurance Commissioner will share some responsibility for what clearly has evolved into an unacceptable present state of affairs. The agency prefers to follow a different course to accomplish a number of goals that will promote future compliance.

First, the agency will put the industry on notice that the status quo must change by instructing it about the laws related to inducements and incentives, and how to conduct business within the letter of these laws. The agency also will put the industry on notice that an enforcement program will be undertaken, and that there will be consequences for those companies that fail in future efforts to comply with laws and regulations.

The recommendations also include an education component for title insurance consumers. The agency will undertake an education campaign, intended to dispel some of the mystery that surrounds title insurance. In more detail, here are the recommendations.

- Technical guidance – The agency will develop and distribute a Technical Assistance Advisory to title insurance companies, clearly stating applicable law and offering additional compliance guidance. The advisory will reference the findings of the investigation and provide notice that the agency will not at this time pursue an enforcement effort aimed at past transgressions.

However, the advisory will clearly state the agency's expectation for future compliance, and will provide warnings about penalties and sanctions that companies and individuals can expect for any future failures to follow the law. The advisory will assist the industry clean up practices and abuses that have come to be accepted as business as usual.

- Consumer education – The agency will undertake a consumer education campaign to help consumers better understand title insurance, and encourage them to shop for title insurance just like they do for auto, home, health and other types of insurance.

The campaign will develop a fact sheet that will provide basic information about title insurance. Information will be presented in other formats as well, including question-and-answer and other educational materials.

All materials and consumer education publications will be posted on the agency's Web site (www.insurance.wa) and promoted through the agency's Insurance Consumer Hotline, a toll-free consumer protection service (1-800-562-6900) provided by the agency.

The bigger picture

During the course of this investigation, and the development of the findings and recommendations, discussions often evolved into a bigger picture examination of consumer protection and the title insurance industry. Current law offers some indirect protections for consumers related to illegal inducements and incentives, but a better benefit to consumers might be gained through a new, innovative approach to address the risks that are currently handled through title insurance.

For instance, the state of Iowa abolished the need for title insurance when it created a division of government that provides low cost title protection for real estate located within the state. The system relies on an abstract and title opinion process. Under this process, the cost for a residential transaction is $110 for coverage up to $500,000. For a residential transaction not involving a transfer of title, such as a refinance or second mortgage, the premium is just $90 for coverage up to $500,000.

In recent years, other types of insurance companies have attempted to introduce insurance products that would compete with title insurers at much less cost to consumers. The title insurance industry reacted swiftly with lawsuits and challenges based on licensing requirements and other issues.

It is interesting to note that, in an age of cyberspace communications and electronic data storage, the title insurance industry still operates on an antiquated system continues to rely on paper or microfiche records. Why is that?

Other questions that could be considered by a working group on title insurance could include:

- Do consumers receive an appropriate benefit for the premiums they pay for title insurance?
- What is the loss-ratio for title insurance companies?
- Is the loss-ratio reasonable and is it a fair measure of value for money spent?
- What percentage of policyholders ever file a claim?
- Is there technology out there that could significantly alter the way title insurance works?
- Are there alternatives for ensuring that the title to a piece of property is clear?

- Is the Iowa system a viable option for Washington?
- Since lenders play a significant role in the purchase of real estate, does the banking/savings and loan/credit union industry have any insight or interest in simplifying this process and cutting costs to consumers?

Interesting questions all.

A commitment to improving title insurance for consumers

The Office of the Insurance Commissioner concludes this report with a final recommendation. As the state's primary champion of consumer rights for Washington's insurance-buying public, the Insurance Commissioner has a duty to ensure that consumers who buy title insurance are getting a fair shake. The answers to the questions posed above can help determine if Washington's consumers are being treated fairly. The Office of the Insurance Commissioner will convene a work group to study the issue of title insurance from the consumer's perspective and make recommendations for improving what some might suggest is an antiquated system that could be brought into the 21st century to the benefit of consumers.

The Insurance Commissioner is committed to ensuring that Washington's insurance-buying public receives the best possible consumer protection, and that includes title insurance.

Appendix A

Revised code of Washington

Rebating (RCW 48.30.140)

Illegal Inducements (RCW 48.30.150

RCW 48.30.140
Rebating.

(1) Except to the extent provided for in an applicable filing with the commissioner then in effect, no insurer, general agent, agent, broker, or solicitor shall, as an inducement to insurance, or after insurance has been effected, directly or indirectly, offer, promise, allow, give, set off, or pay to the insured or to any employee of the insured, any rebate, discount, abatement, or reduction of premium or any part thereof named in any insurance contract, or any commission thereon, or earnings, profits, dividends, or other benefit, or any other valuable consideration or inducement whatsoever which is not expressly provided for in the policy.

(2) Subsection (1) of this section shall not apply as to commissions paid to a licensed agent, general agent, broker, or solicitor for insurance placed on that person's own property or risks.

(3) This section shall not apply to the allowance by any marine insurer, or marine insurance agent, general agent, broker, or solicitor, to any insured, in connection with marine insurance, of such discount as is sanctioned by custom among marine insurers as being additional to the agent's or broker's commission.

(4) This section shall not apply to advertising or promotional programs conducted by insurers, agents, or brokers whereby prizes, goods, wares, or merchandise, not exceeding twenty-five dollars in value per person in the aggregate in any twelve month period, are given to all insureds or prospective insureds under similar qualifying circumstances.

(5) This section does not apply to an offset or reimbursement of all or part of a fee paid to a broker as provided in RCW 48.17.270.

[1994 c 203 § 3; 1990 1st ex.s. c 3 § 8; 1985 c 264 § 14; 1975-'76 2nd ex.s. c 119 § 3; 1947 c 79 § .30.14; Rem. Supp. 1947 § 45.30.14.]

RCW 48.30.150
Illegal inducements.

No insurer, general agent, agent, broker, solicitor, or other person shall, as an inducement to insurance, or in connection with any insurance transaction, provide in any policy for, or offer, or sell, buy, or offer or promise to buy or give, or promise, or allow to, or on behalf of, the insured or prospective insured in any manner whatsoever:

(1) Any shares of stock or other securities issued or at any time to be issued on any interest therein or rights thereto; or

(2) Any special advisory board contract, or other contract, agreement, or understanding of any kind, offering, providing for, or promising any profits or special returns or special dividends; or

(3) Any prizes, goods, wares, or merchandise of an aggregate value in excess of twenty-five dollars.

This section shall not be deemed to prohibit the sale or purchase of securities as a condition to or in connection with surety insurance insuring the performance of an obligation as part of a plan of financing found by the commissioner to be designed and operated in good faith primarily for the purpose of such financing, nor shall it be deemed to prohibit the sale of redeemable securities of a registered investment company in the same transaction in which life insurance is sold.

[1990 1st ex.s. c 3 § 9; 1975-'76 2nd ex.s. c 119 § 4; 1957 c 193 § 18; 1947 c 79 § .30.15; Rem. Supp. 1947 § 45.30.15.]

Appendix B

Unfair practices applicable to title insurers and their agents

WAC 284-30-800 Unfair practices applicable to title insurers and their agents. (1) RCW 48.30.140 and 48.30.150, pertaining to "rebating" and "illegal inducements," are applicable to title insurers and their agents. Because those statutes primarily affect inducements or gifts to an insured and an insured's employee or representative, they do not directly prevent similar conduct with respect to others who have considerable control or influence over the selection of the title insurer to be used in real estate transactions. As a result, insureds do not always have free choice or unbiased recommendations as to the title insurer selected. To prevent unfair methods of competition and unfair or deceptive acts or practices, this rule is adopted.

(2) It is an unfair method of competition and an unfair and deceptive act or practice for a title insurer or its agent, directly or indirectly, to offer, promise, allow, give, set off, or pay anything of value exceeding twelve dollars, calculated in the aggregate over a twelve-month period on a per person basis in the manner specified in RCW 48.30.140(4), to any person as an inducement, payment, or reward for placing or causing title insurance business to be given to the title insurer.

(3) Subsection (2) of this section specifically applies to and prohibits inducements, payments, and rewards to real estate agents and brokers, lawyers, mortgagees, mortgage loan brokers, financial institutions, escrow agents, persons who lend money for the purchase of real estate or interests therein, building contractors, real estate developers and subdividers, and any other person who is or may be in a position to influence the selection of a title insurer, except advertising agencies, broadcasters, or publishers, and their agents and distributors, and bona fide employees and agents of title insurers, for routine advertising or other legitimate services.

(4) This section does not effect the relationship of a title insurer and its agent with insureds, prospective insureds, their employees or others acting on their behalf. That relationship continues to be subject to the limitations and restrictions set forth in the rebating and illegal inducement statutes, RCW 48.30.140 and 48.30.150, which continue to limit gifts, payments and other inducements to a five dollar maximum, per person, per year. [Statutory Authority: RCW 48.02.060(3)(a). 88-11-056 (Order R 88-6), § 284-30-800, filed 5/17/88.]

Appendix C

1990 amendment:
Unfair practices applicable to title insurers and their agents

WAC 284-30-800

Unfair practices applicable to title insurers and their agents.

(1) RCW 48.30.140 and 48.30.150, pertaining to "rebating" and "illegal inducements," are applicable to title insurers and their agents. Because those statutes primarily affect inducements or gifts to an insured and an insured's employee or representative, they do not directly prevent similar conduct with respect to others who have considerable control or influence over the selection of the title insurer to be used in real estate transactions. As a result, insureds do not always have free choice or unbiased recommendations as to the title insurer selected. To prevent unfair methods of competition and unfair or deceptive acts or practices, this rule is adopted.

(2) It is an unfair method of competition and an unfair and deceptive act or practice for a title insurer or its agent, directly or indirectly, to offer, promise, allow, give, set off, or pay anything of value exceeding twenty-five dollars, calculated in the aggregate over a twelve-month period on a per person basis in the manner specified in RCW 48.30.140(4), to any person as an inducement, payment, or reward for placing or causing title insurance business to be given to the title insurer.

(3) Subsection (2) of this section specifically applies to and prohibits inducements, payments, and rewards to real estate agents and brokers, lawyers, mortgagees, mortgage loan brokers, financial institutions, escrow agents, persons who lend money for the purchase of real estate or interests therein, building contractors, real estate developers and subdividers, and any other person who is or may be in a position to influence the selection of a title insurer, except advertising agencies, broadcasters, or publishers, and their agents and distributors, and bona fide employees and agents of title insurers, for routine advertising or other legitimate services.

(4) This section does not affect the relationship of a title insurer and its agent with insureds, prospective insureds, their employees or others acting on their behalf. That relationship continues to be subject to the limitations and restrictions set forth in the rebating and illegal inducement statutes, RCW 48.30.140 and 48.30.150.

[Statutory Authority: RCW 48.02.060 (3)(a), 48.30.140, 48.30.150, 48.01.030 and 48.30.010(2). 90-20-104 (Order R 90-11), § 284-30-800, filed 10/2/90, effective 11/2/90. Statutory Authority: RCW 48.02.060 (3)(a). 88-11-056 (Order R 88-6), § 284-30-800, filed 5/17/88.]

Appendix D

Fidelity National Title

- Multistate Settlement

IN THE MATTER OF CHICAGO TITLE INSURANCE COMPANY, FIDELITY NATIONAL TITLE INSURANCE COMPANY, SECURITY UNION TITLE INSURANCE COMPANY, FIDELITY NATIONAL TITLE INSURANNCE COMPANY OF NEW YORK, and TICOR TITLE INSURANCE COMPANY

MULTI-STATE REGULATORY SETTLEMENT AGREEMENT CONCERNING CAPTIVE TITLE REINSURANCE ARRANGEMENTS

THIS MULTI-STATE REGULATORY SETTLEMENT AGREEMENT (the "Multi-State Agreement") is entered into on this 7th day of September, 2005, by and between Chicago Title Insurance Company, Fidelity National Title Insurance Company, Security Union Title Insurance Company, Fidelity National Title Insurance Company of New York, and Ticor National Title Insurance Company (collectively "Fidelity"), and the Insurance Commissioners of those states (the "Signatory States") who adopt, approve and agree to this Multi-State Agreement in accordance with the provisions of this Multi-State Agreement. The Signatory States find and order as follows:

1. At all relevant times, the Signatory States had jurisdiction over Fidelity and the subject matter of this Multi-State Agreement.

2. On or about October 22nd, 2004, the Colorado Commissioner commenced an investigation of Fidelity to determine whether certain captive title reinsurance arrangements violated state and federal kickback laws. In addition, Fidelity received inquiries from the following state Departments of Insurance ("DOI") and/or Attorneys General ("AG"): Arizona DOI; California DOI, Colorado AG; Connecticut DOI, Idaho DOI; Michigan DOI; Minnesota DOI; Montana DOI, Nevada DOI; New York AG; North Carolina DOI; Ohio DOI; Virginia DOI; and Washington DOI. Based upon Fidelity's responses to the Colorado interrogatories and documents it provided, the Signatory States have agreed to accept the findings set forth in this Multi-State Agreement.

3. By their signatures and delivery of this Multi-State Agreement, as described below, and by virtue of the execution of this Multi-State Agreement by the Signatory States, the Signatory States each acknowledge and agree that they have read and understand the terms and conditions of this Multi-State Agreement and agree that the execution of this document fairly, reasonably and adequately addresses the concerns of affected citizens in their respective states. In addition, the Signatory States, by way of signature below, give that state's express assurance that under applicable state laws, regulations and judicial rulings, each has the authority to enter into this Multi-State Agreement.

4. Fidelity entered into two relevant types of reinsurance arrangements. These arrangements are known as: (1) Single-parent captive title reinsurance; and (2) sponsored captive title reinsurance, also known as protected cell captive reinsurance.

5. In a single parent captive reinsurance arrangement, a settlement producer (a homebuilder or lender) and a title insurer enter into a reinsurance treaty. The title insurer agrees to cede title insurance policy liability to a reinsurer owned in whole or in part by a homebuilder or lender, or their respective affiliates.

6. In a sponsored captive reinsurance arrangement, a settlement producer (homebuilder or realtor, or group of either or both) and a title insurer enter into a reinsurance treaty. The title insurer agrees to cede title insurance policy liability to a reinsurer that is owned by the title insurer itself. The title insurer maintains each settlement producer's business in individual accounts within the reinsurance entity.

7. On or about April, 1999, Fidelity began entering into single parent reinsurance arrangements with Vermont-licensed captive title reinsurers wholly-owned by certain homebuilders or their affiliates. Pursuant to the arrangements, Fidelity agreed to reinsure all title business it received from the builder in a defined geographical area with the builder's reinsurance entity. Generally, under the terms of the reinsurance arrangements, Fidelity deducted a "processing fee" (typically $350) from the policy premium for the production of the title policy. Fidelity then paid 50% of the remaining premium to the reinsurer as a reinsurance or cession premium, and the reinsurer assumed 50% of the policy liability on a quota-share basis.

8. On or about September, 2001, Fidelity began entering into single parent reinsurance arrangements with Vermont-licensed captive title reinsurers (and one South Carolina captive title reinsurer) wholly-owned by certain institutional lenders or their affiliates. Pursuant to the arrangements, FNF agreed to reinsure all title business it received from the lender for refinancing in a defined geographical area with the lender's reinsurance entity. Generally, under the terms of the reinsurance arrangements, Fidelity deducted a "processing fee" (typically $250) from the policy premium for the production of the title policy. Fidelity then paid 50% of the remaining premium to the reinsurer as a reinsurance or cession premium, and the reinsurer assumed 50% of the policy liability on a quota-share basis.

9. On or about September, 2003, Fidelity began entering into sponsored captive reinsurance arrangements with certain builders. Pursuant to the

arrangements, Fidelity agreed to reinsure all title business it received from certain builder transactions in a defined geographical area with Fidelity Title Reinsurance Company, a Vermont-licensed reinsurer affiliated with Fidelity (and wholly owned by an affiliate of Fidelity). After deduction of a processing fee, Fidelity paid 50% of the remaining premium to the reinsurer as a reinsurance or cession premium, and the reinsurer assumed 50% of the policy liability on a quota-share basis.

10. On or about September, 2003, Fidelity began entering into sponsored captive reinsurance arrangements with certain real estate brokers. Pursuant to the arrangements, Fidelity agreed to reinsure all title business it received from the real estate brokers with Fidelity Title Reinsurance Company, a Vermont-licensed reinsurer affiliated with Fidelity (and wholly owned by an affiliate of Fidelity). After deduction of a processing fee, Fidelity paid approximately 10% to 20% of the premium to the reinsurer as a reinsurance or cession premium, and the reinsurer assumed the respective policy liability on a quota-share basis.

11. In the sponsored captive reinsurance arrangements, the builders and real estate brokers, or affiliates formed by them (the "Participants") executed Participation Agreements with Fidelity Title Reinsurance Company. Under the Participation Agreements, the Participants indemnified Fidelity Title Reinsurance Company for any claims losses and, in return, received distributions as provided in the Participation Agreement.

12. On or about February, 2005, Fidelity informed the Colorado Division of Insurance that it had terminated on a nationwide basis, all of its reinsurance arrangements and any related Participation Agreements in accordance with their respective terms or notice provisions and/or obtained mutual immediate termination from certain reinsurers. Also in February, 2005, Fidelity asserted to the Colorado Commissioner that all cession payments to any captive reinsurer, and all distributions to any Participant, were permanently suspended and terminated in all states.

13. Fidelity asserts its belief that the captive title reinsurance agreements (and related Participation Agreements) to which it was a party were structured in conformance with the provisions of federal law (RESPA). In particular, Fidelity asserts its belief that the arrangements were in conformance with both an August 6, 1997 letter from HUD permitting captive reinsurance agreements in the field of mortgage reinsurance under certain defined circumstances, and a later letter dated August 12, 2004 that specifically provided that the August 6th letter also applied to captive title reinsurance arrangements.

14. The Signatory States assert that, after the Colorado Division of Insurance's review, and/or their own review of Fidelity's answers to

interrogatories, copies of the reinsurance treaties, annual statement filings, and other documentation submitted by Fidelity, the captive title reinsurance arrangements described in this Multi-State Agreement violate state and federal laws prohibiting kickbacks for the referral of title business, including, but not limited to 12 U.S.C. § 2607, commonly referred to as Section 8 of The Real Estate and Settlement Procedures Act of 1974 ("RESPA").

15. The Signatory States and Fidelity, in order to avoid the expense, uncertainty, and distractions of litigation, and without Fidelity admitting or denying the allegations set forth in this Multi-State Agreement, desire to resolve this matter and therefore stipulate and agree as set forth in this Multi-State Agreement.

16. Fidelity will promptly and voluntarily issue refunds to all consumers in all Signatory States where any consumer paid any portion of a title insurance premium that was allocated to a reinsurance entity pursuant to any of the above-referenced reinsurance arrangements or Participation Agreements. As of the date of this Multi-State Agreement, the parties estimate that approximately 18 states qualify as Signatory States, and approximately $1.2 million will be refunded under the terms of this Multi-State Agreement.

17. Fidelity agrees to exercise its best efforts to complete the refund process in each Signatory State, no later than one hundred twenty (120) days from the date that particular Signatory State signs the Multi-State Agreement. The failure, refusal, or delay of a particular Signatory State to sign the Multi-State Agreement shall not affect the rights and obligations of Fidelity as to the other signing Signatory States.

18. Fidelity will continue to cease and desist operating under the described captive reinsurance arrangements and will diligently make the refunds outlined in this Multi-State Agreement.

19. Fidelity will not enter into any new captive reinsurance arrangements substantially similar to those described and affected by this Multi-State Agreement provided, however, that Fidelity will be relieved from the cease and desist terms of this agreement by any order entered by a court of competent jurisdiction determining that the above described captive reinsurance, arrangements or participation agreements substantially similar to the same, are legal under federal law and the respective state law of the Signatory State.

20. The intent and purpose of this Multi-State Agreement is to provide for the complete settlement of the alleged violations described in this Multi-State Agreement, occurring on or before the effective date of this Multi-State

Agreement. Any other allegations, facts, and issues not described in this Multi-State Agreement have not been considered and are not made a part of this Multi-State Agreement. By entering into this Multi-State Agreement, Fidelity shall not be deemed to have made any admission of liability or wrongdoing. By execution of this Multi-State Agreement, it is the intent of the Signatory States and Fidelity to resolve all issues pertaining to the matters alleged above without the expense and uncertainty of litigation.

21. The parties agree that this Multi-State Agreement shall be fully executed as to each state upon the signature of both Fidelity and that particular Signatory State. The failure, refusal, or delay of any Signatory State to sign the Multi-State Agreement shall have no effect on the rights and obligations imposed by the Multi-State Agreement as to Fidelity and the other Signatory States who have signed the Multi-State Agreement.

22. This Multi-State Agreement shall not be used as evidence of the truth of the facts alleged by the Signatory States, or as evidence of an admission or wrongdoing.

23. Fidelity understands and acknowledges that this Multi-State Agreement is a public record. Fidelity further understands that the Colorado Division of Insurance will send notice of this Multi-State Agreement to the NAIC, and that the Signatory States may, in their discretion, notify any other person of the content and terms of this Multi-State Agreement.

24. This Multi-State Agreement constitutes the complete agreement between Fidelity and the Signatory States. All previous agreements, understandings, representations or warranties have been fully and completely merged and integrated into this Multi-State Agreement.

25. Fidelity is aware of and understands the right to receive a formal notice of hearing and to have a formal administrative hearing as to this matter pursuant to the laws of the Signatory States. Fidelity hereby waives those rights and requests that this Multi-State Agreement be accepted by the Signatory States with the same force and effect as an order entered into as a result of a formal administrative proceeding. Fidelity further waives the right to either administrative or judicial appeal this Multi-State Agreement.

26. This Multi-State Agreement shall be binding on Fidelity and on the Signatory States executing this Multi-State Agreement. Any State that wishes to become a party to this Multi-State Agreement shall execute a State Amendment page within sixty (60) days from the effective date of this Multi-State Agreement, which is September 7, 2005.

27. The Signatory States reserve the right to impose fines, penalties, and take any and all other actions necessary to carry out the terms of this Multi-State Agreement if Fidelity fails to comply in good faith with all provisions of this Multi-State Agreement. In such event, Fidelity shall be responsible for reimbursing the affected Signatory State(s) for expenses incurred in bringing such action. Each Signatory State reserves the right to request from Fidelity proof of compliance in such State to ensure that the provisions of this Multi-State Agreement are enforced.

28. Fidelity enters into this Multi-State Agreement voluntarily, absent any duress or coercion on behalf of the Signatory States, after the opportunity to consult with legal counsel, and with full understanding of the legal consequences of this Multi-State Agreement.

29. This Multi-State Agreement may be executed in counterparts, and a facsimile signature will have the same force and effect as an original signature penned in ink. When Fidelity and each of the Signatory States has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and when taken together with other signed counterparts, shall constitute one fully executed Multi-State Agreement which shall be binding upon and effective as to that particular Signatory State according to its terms.

APPROVED AND AGREED TO BY AND ON BEHALF OF CHICAGO TITLE INSURANCE COMPANY, FIDELITY NATIONAL TITLE INSURANCE COMPANY, SECURITY UNION TITLE INSURANCE COMPANY, FIDELITY NATIONAL TITLE INSURANCE COMPANY OF NEW YORK, and TICOR TITLE INSURANCE COMPANY

By: _____ EVP

Peter T. Sadowski

Executive Vice President and General Counsel

STATE AMENDMENT

This Multi-State Agreement is accepted by the Commissioner for the Washington Office of the Ins. Commissioner with full force and effect in accordance with the terms of the Multi-State Agreement.

By:

Commissioner Mike Kreidler
Washington Office of the Ins. Commissioner

Nov. 2, 2005

Date

Appendix E

Sample demand for records

August 24, 2005

Kevin R. Chiarello
Senior VP, Chief Compliance Officer
Fidelity National Financial, Inc.
17911 Von Karman Avenue, Suite 300
Irvine, CA 92614

Re: Financial Information

Dear Mr. Chiarello:

The Commissioner is undertaking a major investigation of potential illegal inducements and rebates by title insurance companies and title insurance rates.

Therefore, we are requesting the following financial information from the below listed title companies. If you are not the correct individual to whom to direct this request for each of these companies please so inform me so that it can get directed to the correct person. If the information can be submitted in electronic format (excel and/or pdf) either by email or by disk that would be preferable to paper copies. The time period for which the information must cover is from and including January 1, 2004 through June 30, 2005.

The financial information must include a complete copy of the general ledger, both income and expenses (including employee salaries) or other such similar financial records for each of the following companies for the counties designated. The requested information does not include escrow trust account(s).

The information must also include a copy of the requests for reimbursement submitted by employees for reimbursement by the title company for the expenses they incurred on company business. At this time we are not requiring that the receipts to support these reimbursements be submitted, but we may request this information in the future.

Chicago Title Insurance Company – King, Pierce & Snohomish Counties.

Fidelity National Title Insurance Company of Washington

Ticor Title Company of Washington

Normally the statutes and regulations require that this information be submitted to the Commissioner within 15 business days of the receipt of this letter, but because of the amount of information being requested, we are willing to grant the companies until Friday, September 30, 2005 to submit the information to the Commissioner.

Sincerely,

James E. Tompkins
Staff Attorney, Policy Division
(360) 725-7036
Fax (360) 586-3109
Email: jimt@oic.wa.gov