

COMMONWEALTH OF VIRGINIA



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STATE CORPORATION COMMISSION BUREAU OF INSURANCE

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Administrative Letter
1992 - 6

TO: All Companies Licensed to Write Title Insurance in Virginia and All Licensed Title Insurance Agents in Virginia

RE: Prohibition Against the Payment or Receipt of Title Insurance Kickbacks, Rebates, Commissions and Other Payments

Subsection A of Section 38.2-4614 prohibits a person selling real estate, or performing services as a real estate agent, attorney, or lender, who performs services regarding a particular real estate settlement or sale, from paying or receiving, directly or indirectly, any payment in connection with the issuance of title insurance on the property. The Code further states that no title insurance company, agency or agent shall make any such payment. This section does not apply to federally insured lenders, holding companies to which they belong, or subsidiaries of such lenders or holding companies.

Subsection C of Section 38.2-4614 states that the kickback prohibition is not violated solely by ownership in a "bona fide title insurance company, agency or agent", which is defined as "...a company, agency or agent that passes upon and makes title insurance underwriting decisions on title risks, including the issuance of title insurance policies or binders and endorsements."

A recent Bureau investigation has revealed that some companies have arranged for what are sometimes referred to as "sub-agency" programs. These agencies which are incorporated and owned by attorneys or realtors do not meet the definition of a bona fide title insurance agency. Some do no actual title work and others contract the title work back to the title insurer, including the title search, underwriting, and the issuance of the

policy and commitment. As stated in the statute, a bona fide title agency makes underwriting decisions on title risks, and issues policies or binders and endorsements. The "sub-agency" programs are considered a violation of Section 38.2-4614 and any title company making payments to these agencies is in violation of the statute.

In addition to these practices, we have been made aware of title companies and agencies offering free settlement services and discounts on settlement fees with the purchase of a title policy. Other companies and agents are offering free homeowner warranties with the purchase of a title policy. We believe these practices are in conflict with Virginia Code Section 38.2-509(2), which prohibits the offering or giving directly or indirectly of any valuable consideration as inducement to an insurance contract.

You should make certain that your company or agency is in compliance with the requirements of these statutes. Arrangements which are in violation of the Code may result in monetary penalties, the revocation of your license or conviction for a misdemeanor.

Should you have any questions concerning this matter, please contact the Bureau of Insurance in writing.

Sincerely,



Steven T. Foster
Commissioner of Insurance

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