

## California Enacts SB 133

### The Strictest Law in the Nation on Rebates



- ✓ NO FOOD OR BEVERAGES
- ✓ NO SPORTS
- ✓ NO ENTERTAINMENT

*It's the Law!*

### Insurance Code §12404(a) *still in effect...*

*12404. (a) It is unlawful for any title insurer, underwritten title company or controlled escrow company to pay, directly or indirectly, any commission, compensation, or other consideration to any person as an inducement for the placement or referral of title business. Actual placement or referral of title business is not a precondition to a violation of this section, whether the violation is or is not a per se violation pursuant to subdivision (c).*



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# Your Questions Answered

## Q What changed with this new law?

A The new law, Senate Bill 133, prohibits title companies and their marketing representatives from paying for any food, beverage or entertainment. All the prior prohibitions on other types of rebates remain in place.

## Q Are there any other expenses that are specifically prohibited under the new law?

A Yes. The law makes it clear that advertising or paying for advertising in any newspaper, newsletter, magazine or publication that is produced by or on behalf of a person that results in a direct or indirect subsidy to the person violates the law.

## Q What is permitted?

A Limited promotional items are permitted. These items must have a permanently affixed title company logo and cannot have a value of more than \$10. Gift certificates and gift cards are not promotional items.

## Q Can receiving a rebate be a crime?

A Commercial bribery is a crime under the California Penal Code. A real estate licensee who corruptly receives compensation prohibited under the Real Estate Law for the referral of title business may be charged with the crime of commercial bribery.

## Q Can giving a rebate be a crime?

A A title marketing representative who corruptly violates the anti-rebate provisions of the Insurance Code by paying a commission, compensation or other consideration to a real estate licensee may also be charged with the crime of commercial bribery.

## Q Is providing educational materials permitted?

A Yes, but only if the educational materials exclusively relate to the business of title insurance and only if continuing education credits are not offered to the recipient.

## Q Do the limitations on expenses apply only to title marketing representatives?

A No. The prohibited expenditures in the law apply to title insurers, underwritten title companies, controlled escrow companies and all title company employees, including title marketing representatives. However, the registration/certification program created in SB 133 only applies to title marketing representatives.

## Q What happened to the law that allowed reasonable expenditure for food, beverages, entertainment and educational programs so long as it was a permitted IRS expense?

A Those provisions of law have been repealed by Senate Bill 133.

## Q What about all the existing prohibitions on rent, equipment and other items?

A Those continue to be prohibited.

## Q Is there a conflict between prohibited title companies expenditures and what real estate licensees are permitted to receive?

A Under the Real Estate Law, real estate agents and brokers, individually and collectively in groups or associations, can receive meals and beverages. Title companies are prohibited from providing any such expenditures under the Title Insurance Law, but are permitted to offer education and/or educational material regarding title and escrow, as well as promotional items (worth less than \$10, and with a permanently-affixed logo).

## Q Are title marketing representatives now separately regulated?

A Yes. Anyone who is employed by a title insurer, underwritten title company or controlled escrow company whose primary duty is to market, offer, solicit, negotiate or sell title insurance now has to get a certificate of registration as a title marketing representative from the Department of Insurance.

## Q What happens if a registered title marketing representative violates the law?

A There will be a hearing to determine if the title marketing representative violated the law after the Department of Insurance brings an administrative action against a title marketing representative.

## Q If the Department imposes a monetary penalty can the title company pay the penalty?

A No. The title company cannot pay the penalty or give the title marketing representative the funds to pay the penalty. The penalty must be paid from the personal funds of the title marketing representative.

## Q Will the Department of Insurance track title marketing representatives?

A Yes. If a title marketing representative's employment is terminated then the title company must notify the Department of Insurance within 30 days. If a title marketing representative is hired by a different company then the company has 30 days to notify the Department that the title marketing representative was hired.

## Q Why is this law so important to title companies and marketing representatives?

A Title companies can be fined up to 5 times the amount of the expense. Title marketing representatives can have their license suspended or revoked and be personally fined for violating the new law.

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