

March 11, 2009

Insurance Commissioner Steve Poizner  
California Department of Insurance  
300 Capitol Mall, 17<sup>th</sup> Floor  
Sacramento, CA 95814

Dear Commissioner Poizner:

As you are probably aware, the California Land Title Association and individual title companies are working closely with the Department to successfully implement the new certification program developed by the CLTA-sponsored bill, SB 133 (Aanestad).

In addition, CLTA is working closely with your policy-making and legal staff to eliminate any ambiguities that may exist in current law as a result of the passage of SB 133 and the pre-existing statutes that have ambiguities that could be eliminated by specific regulatory language.

As part of our cooperative outreach to Departmental staff to clarify the regulations and statutes, Department staff asked that CLTA work with its member companies to draft suggested regulatory language that would clarify allowable marketing practices. Attached you will find a copy of this draft language for review.

Consumers benefits are paramount in the approach we have taken:

The title industry has crafted the suggested regulatory language with direct marketing to consumers in mind. We have been very focused on making sure that whatever informational products we could provide under the suggested regulatory language actually ensures those benefits inure to consumers.

Consumers do seek assessor information, title documents in county recorders records, and other informational and promotional products title companies provide for any number of reasons, such as getting copies of recorded documents they have lost, getting documents to assist them in making improvements on the property (e.g. recorded easements if they want to build a pool), or just seeking informational material telling them the potential value of their home relative to their neighbors, etc.

Being sensitive to your position that title companies should do more direct outreach to consumers, we are making sure this avenue remains open and the potential to increase such marketing directly, maximized. This also provides the title industry with more direct consumer access which is something that permeates the proposed regulations.

### Shutting down real estate professional abuse of title products:

We are also sensitive to the concern that some real estate professionals have potentially abused title marketing services by putting their company logo, indicia or contact information on products that are provided to consumers.

The CLTA and member companies drafting the attached language have tried to draft these regulations so that when informational products are provided (such as a property profile) in hard copy or through a website, only the title company logo, indicia, watermark, etc., are to be provided on these documents.

### Creating realistic avenues of marketing to all 12404 "persons":

Finally, CLTA and member companies who helped draft the attached regulatory language have tried to balance the Department's goal of marketing reforms with the reality that the title companies operate within the real estate economy where member companies interact daily with lenders, builders, real estate professionals, and consumers.

Quite frankly, the best place for all of the above-mentioned "persons" to get valuable information on real estate records, county assessor records, and other information important to the transfer, exchange, sale, or refinancing of real property is title companies. Thus, the attached language is an attempt to bring about very real and important marketing reforms, while not completely shutting off access to people who need this information. In short, title companies are an important link in these processes and we would like to ensure we remain in this position as we do our marketing and outreach to consumers.

### We remain open to suggestions and modifications to our suggested regulatory language:

We have made a very real effort to draft clear, concise, and clarifying language that will enable the Department, title companies, title marketing representatives, real estate professionals, lenders, and builders to have a much better understanding of what are allowable marketing practices by title companies in the area of property profiles and what is traditionally known as farm packages.

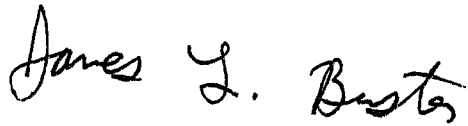
Having said that, all regulatory language potentially has areas that can be improved once others have a chance to review and consider its implications. We welcome your feedback and comments on the language we have drafted.

### Time is of the essence:

Given that a regulatory vehicle exists to put new regulations in place relatively quickly (CDI REG-2008-00023, June 17, 2008, "Rebates and Commissions"), we hope that CLTA, member title companies, and the Department can work quickly to finalize regulations. Waiting to create a new regulatory package that would have to start the APA process all over again will slow down our common goal of clarifying marketing guidelines for all parties involved.

Thank you again for working closely with CLTA and title companies on this matter. We eagerly await your feedback and would like to request a follow-up meeting between CLTA and the Department sometime in the next couple of weeks to discuss the thoughts and intent that went into the drafting of the proposed regulation.

Respectfully,

Handwritten signature of James L. Buster in black ink.

Larry Buster  
President

Handwritten signature of Craig C. Page in blue ink.

Craig C. Page  
Executive Vice President  
and Counsel

**STATE OF CALIFORNIA  
DEPARTMENT OF INSURANCE  
45 Fremont Street, 21st Floor  
San Francisco, California 94105**

REG-2008-00023

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PROPOSED TEXT

TITLE INSURANCE REBATES AND COMMISSIONS

Adopt regulations to add sections to Title 10, Chapter 5, Subchapter 3, Article 14, to read as follows:

Article 14. Title Insurance

Subarticle 2. Regulations Governing Rebates and Commissions

**§2555.5 Preamble**

- (a) Section 12404 of the California Insurance Code prohibits a title insurer, underwritten title company or controlled escrow company to pay, directly or indirectly, any commission, compensation, or other consideration to any “person”, as defined in Insurance Code Section 12404(b)(2), as an inducement for the placement or referral of title business.
- (b) Section 12404.1 permits the furnishing of the names of owners of record, descriptions of real property, and property characteristics, as defined in Section 408.3 of the Revenue and Taxation Code, whether provided on individual or multiple properties and whether provided in printed form or by electronic media.
- (c) Section 12404(d)(3) authorizes the commissioner to permit additional expenditures by regulation as appropriate to further the public policy goals of the statute.
- (d) The Insurance Commissioner has promulgated these regulations to accomplish the following objectives:
  - (1) To clarify the standards for information that may be provided within the meaning of Insurance Code Section 12404.1; and
  - (2) To permit expenditures for certain information that is beneficial to the public.

*NOTE: Authority: Sections 12389, 12404, 12404.1, 12405, 12405.7, and 12921 of the Insurance Code.*

*Reference: Sections 12389, 12389.1, 12389.2, 12404-12411, 12919 and 12921 of the Insurance Code.*

**§2555.6 Permissible Information**

- (a) The following types of information may be provided on individual or multiple properties, and in printed form, on an Internet web site or by electronic media:
  - (1) Names, addresses, documents and other information of the kind contained in County Tax Assessors' public records, if the information contains the name and logo and/or watermark of the title insurer, underwritten title company or controlled escrow company.
  - (2) Images of documents contained in County Recorders' public records.
- (b) Information permitted by subsection (a) (1) may be sorted and reorganized to make the information more useful to the recipient, and may include comparable sales information.
- (c) Information, other than that described in subsection (a), may be provided in printed form, on an Internet web site or by electronic media under the following conditions:
  - (1) The information identifies the title insurer, underwritten title company or controlled escrow company responsible for the generation of the information, by name or logo and/or watermark.
  - (2) The information is freely available to the public.
  - (3) The information is useful to consumers contemplating the purchase, sale or refinance of real property, including but not limited to forms that are typically used by consumers in real estate transactions, commentary about general real estate principles and information about real estate market conditions.
  - (4) The information is not designed to assist persons in marketing services unrelated to title insurance and escrow, including but not limited to, information derived from the county recorder records, such as lists of loans, notices of default, notices of trustee sales, foreclosed properties and other information not tailored to assist consumers who purchase title insurance and escrow services.
  - (5) The information may include data about schools or data about specific neighborhoods, communities or areas only if it is provided on an Internet web site, and not by any other electronic media or in printed form.
- (d) Information provided pursuant to this section shall be provided in a format that is designed to be unalterable by a person for marketing purposes unrelated to the business of title insurance.

*NOTE: Authority: Sections 12389, 12404, 12404.1, 12405, 12405.7, and 12921 of the Insurance Code.*

*Reference: Sections 12389, 12389.1, 12389.2, 12404-12411, 12919 and 12921 of the Insurance Code.*

**§2556 Maintenance of Records**

**§2556.1 Filing of Rates and Reporting of Statistics**

**§2556.2 Rating Examinations**