

DEPARTMENT OF INSURANCE

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June 12, 2009

Larry Buster, President
Craig C. Page, Executive Vice President and Counsel
California Land Title Association
1215 K Street, Suite 1816
Sacramento, CA 95814

Dear Mr. Buster and Mr. Page:

As of the date of this letter, the Department has issued 1,913 Certificates of Registration to Title Marketing Representatives as a result of the implementation of the CLTA-sponsored bill, SB 133 (Aanestad). Ninety-five percent of the registrations were reviewed and acted upon within 60 days of the effective date of SB 133. The online application process flowed smoothly and expeditiously, in no small measure due to the effective collaboration with the California Land Title Association and individual title companies. I commend your efforts.

CLTA Proposed Regulatory Changes

I am also aware of the thoughtful work CLTA and member title companies have undertaken in proposing regulatory language to identify a broader scope of allowable marketing practices. My staff and I reviewed your proposal carefully and closely. If this has taken longer than you expected, please accept my apologies. Since CLTA's proposal reflects significant policy issues, it was important to give its review ample time to consider its merits.

As you recognize, the goal of the preexisting statutes and SB 133 is to curb marketing abuses for the protection of consumers. We believe that implementation of SB 133 will bring desirable marketing reforms and create a level playing field, and we commend CLTA for its leadership in sponsoring this important legislation. We also appreciate and understand your interest in maintaining your customer relationships and expanding your outreach to consumers.

However, we have substantive and procedural concerns with the regulations that you have proposed. One particular substantive concern is that the proposed regulations would authorize distribution of any “information” that is “useful to consumers contemplating the purchase, sale or refinance of real property.” This is a very broad grant of authority. While we understand your intent to be focused upon informational products¹ more or less as they currently exist in the market, we must consider how the rule might be employed prospectively. From this perspective, the proposed regulation raises substantive concerns.

Procedurally, we do not believe it desirable to address this issue at all through an amendment to our current rulemaking (CDI File # 2008-00023). While this topic is within the scope of the notice for the current rulemaking, the issues addressed in the CLTA proposal do not arise as a result of SB 133. The law governing the legality of informational products was not amended by SB 133. Therefore, we believe that if any changes in this area of the law are to be considered, they should be evaluated in a separate rulemaking with its own Notice, Initial Statement of Reasons, and a full 45-day public comment period.

Statutory Marketing Guidelines

You have told us that your paramount interest is to achieve a common understanding of statutory marketing guidelines. In particular, you are looking for clarity with respect to informational products that may be distributed to any person.

As context, Article 6 (commencing with §12404), contained in Division 2, Part 6, Chapter 1 of the California Insurance Code (“CIC”), prohibits paying or furnishing, directly or indirectly, business support expenses or other consideration to any person as an inducement for the referral of title business. However, there are certain exceptions. Section 12404.1 of the Insurance Code enumerates certain informational products that are not deemed to be a violation of §12404.

Pursuant to CIC §12404.1, here is what the law allows a title insurer, underwritten title company or controlled escrow company to furnish, without charge, to realtors, lenders, homebuilders and other “12404 persons” (defined in CIC §12404(b)(2)). As stated in §12404.1, this information may be provided in printed form or electronic media, and may be provided on individual or multiple properties:

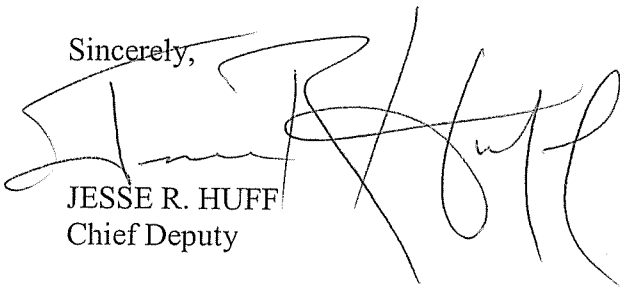
¹ Reference to “informational products” rather than “property profiles” or “farm packages” avoids the ambiguity surrounding those terms.

- The names of owners of record of specified real property
- A description of real property
- “Property characteristics,” as defined in Section 408.3 of the California Revenue and Taxation Code, meaning:
 - ✓ Year of construction of improvements to the property
 - ✓ Square footage
 - ✓ Number of bedrooms and bathrooms of all dwellings
 - ✓ The property’s acreage
 - ✓ Other attributes of or amenities to the property, such as swimming pools, views, zoning classifications or restrictions, use code designations
 - ✓ Number of dwelling units of multiple family properties

This is simply a restatement of the law for ease of distribution to your member title companies.

Please let me extend my thanks once again to you and the individual title companies for your diligent efforts.

Sincerely,



JESSE R. HUFF
Chief Deputy