

CR 85-159

STATE OF WISCONSIN
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SEP 25 1986

DOUGLAS LA FOLLETTE
SECRETARY OF STATE

STATE OF WISCONSIN)
)
OFFICE OF THE COMMISSIONER OF INSURANCE)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Thomas P. Fox, Commissioner of Insurance and custodian of the official records of said office, do hereby certify that the annexed order renumbering, amending, repealing, recreating and creating a rule relating to title insurance by affiliates of lenders, real estate brokers, attorneys, and other producers of title insurance was issued by this office on September 25, 1986.

I further certify that said copy has been compared by me with the original on file in this office and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name in the City of Madison, State of Wisconsin, this 25th day of September, 1986.

RECEIVED

SEP 25 1986

2:30 pm
Bureau of Statutes
Bureau



Thomas P. Fox
Commissioner of Insurance

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12-1-86

ORDER OF THE

OFFICE OF THE COMMISSIONER OF INSURANCE

SEP 25 1986

DOUGLAS LA FOLLETTE
SECRETARY OF STATE

An order to renumber and amend 3.32 (3) (a) and (e); amend Ins 3.32 (2), (3) (c) (intro.) and (d), (4) (intro) and (e) to (p) and (r); repeal and recreate 3.32 (3) (b), (4) (q) and (5) and create 3.32 (3) (intro), (a), (am) and (bm) and (3) (c) 4 and 6.61 (2m) relating to referral of title insurance by affiliates of lenders, real estate brokers, attorneys and other producers of title insurance.

ANALYSIS PREPARED BY

THE OFFICE OF THE COMMISSIONER OF INSURANCE

Under the current rules title insurers and their agents are prohibited from paying lenders, real estate brokers, sellers, attorneys, and others involved in real estate transactions ("producers of title insurance") for referral of title insurance orders. This rule makes it clear that the same prohibition applies to affiliates of producers of title insurance unless the affiliate sells a substantial number of title insurance policies to persons who are not customers of the lender, real estate broker or seller.

The restrictions on payment for referrals are made applicable to an affiliate of a producer of title insurance for a one year period after the end of any quarter calendar year in which gross revenue from operations derived from referrals from affiliated producers of title insurance exceeds 40% of

total gross revenue from operations in the previous quarter. The restrictions do not apply to an affiliate of an attorney if the affiliate actually does a title examination prior to issuing a policy.

Under current rules a title insurer or agent may pay a fee to a producer of title insurance for service rendered only if the fee bears a reasonable relation to the services rendered. This rule establishes a presumption that a fee does not comply with this standard if it is paid on a commission basis.

These provisions take effect on June 30, 1987. There is a two-year transition period following that date.

In addition, the rule repeals a rule which prohibits title insurers from advertising in publications distributed by lenders, real estate brokers or attorneys. Advertising in those materials is permitted if the consideration is reasonable and any title insurer may advertise.

Pursuant to the authority vested in the commissioner of insurance by sections 628.34 (4), (5), (11) and (12), Stats., the commissioner adopts the following rule interpreting section 628.34 (4), (5), (11) and (12), Stats.:

SECTION 1. Ins 3.32 (2) is amended to read:

Ins 3.32 (2) SCOPE. ~~This rule shall apply~~ section applies to all ~~operations of title insurers and title insurance agents which write the type of insurance authorized by s. Ins-6.75-(2)-(h).~~

SECTION 2. Ins 3.32 (3) (intro.) is created to read:

Ins 3.32 (3) DEFINITIONS (intro.). In this section:

SECTION 3. Ins 3.32 (3) (a) is renumbered 3.32 (3) (e) and amended to read:

Ins 3.32 (3) (e) ~~Title insurer as used in this rule~~ "Title insurer" means all insurance companies authorized to write title insurance as defined by section Ins 6.75 (2) (h) and their affiliates, and includes all officers and employes and representatives of ~~such the~~ insurance companies; ~~all agents or representatives of such insurance companies; and all affiliated entities including the officers and employes of such affiliated entities~~ or their affiliates.

SECTION 4. Ins 3.32 (3) (a) and (am) are created to read:

Ins 3.32 (3) (a) "Affiliate" has the meaning provided under s. 600.03 (1), Stats.

(am) "Agent" has the meaning provided under s. 600.03 (1r), Stats.

SECTION 5. Ins 3.32 (3) (b) is repealed and recreated to read:

Ins 3.32 (3) (b) "Affiliate producer" means an affiliate of a producer of title insurance, but only for the 12-month period commencing after June 30, 1987, and after the end of any quarter calendar year in which the affiliate's gross revenue from operation in this state from title insurance directly or indirectly referred by affiliated producers of title insurance exceeds 40% of the affiliate's gross revenue from operations in this state for title insurance in the previous quarter calendar year. However, if the previous quarter calendar year commences prior to July 1, 1988, the percentage is 80%; and if it commences prior to July 1, 1989, the percentage is 60%. "Affiliate producer" does not include a person who is affiliated with producers of title insurance who are all attorneys if the affiliate examines the title for each title insurance policy it issues.

SECTION 6. Ins 3.32 (3) (bm) is created to read:

Ins 3.32 (3) (bm) "Control" has the meaning provided under s. 600.03 (13), Stats.

SECTION 7. Ins 3.32 (3) (c) (intro.) is amended to read:

Ins 3.32 (3) (c) ~~Such person as used in this rule~~ "Producer of title insurance" means any of the following, other than a title insurer or ~~affiliated entity as defined herein~~, who order or influence, directly or indirectly, the ordering of title insurance and related services:

SECTION 8. Ins 3.32 (3) (c) 4 is created to read:

Ins 3.32 (3) (c) 4. An affiliate producer.

SECTION 9. Ins 3.32 (3) (d) is amended to read:

Ins 3.32 (3) (d) ~~Title insurance rates as used in this rule~~ "Title insurance rates" means all charges made by a title insurer in connection with the issuance of a title insurance policy or a commitment to issue a title insurance policy and ~~specifically includes~~ includes, but is not limited to, search and examination charges ~~and all other charges.~~

SECTION 10. Ins 3.32 (3) (e) is renumbered 3.32 (3) (cm) and amended to read:

Ins 3.32 (3) ~~(e)~~ (cm) ~~Supplementary rate information as used in this rule~~ "Supplementary rate information" has the meaning ~~as defined in~~ provided under s. 625.02 ~~(i)~~ (3), Stats.

SECTION 11. Ins 3.32 (4) (intro) and (e) to (p) are amended to read:

Ins 3.32 (4) Ins 3.32 PROHIBITED PRACTICES (intro). No title insurer ~~shall~~ or agent of a title insurer may engage in any of the following practices:

(e) Paying, or offering to pay, the cancellation fee, the fee for a preliminary title report or other fee on behalf of ~~any-such-person~~ producer of title insurance after inducing ~~such~~ the person to cancel an order with another title insurer.

(f) Making or guaranteeing, or offering to make or guarantee, ~~either~~ directly or indirectly, any loan to ~~any-such-person~~ producer of title insurance regardless of the terms of the note or guarantee. This prohibition is not applicable to customary business collection procedures, claims settlement and salvage activities and other business activities totally unrelated to the solicitation of business for which a charge is made.

(g) Providing, or offering to provide, ~~either~~ directly or indirectly, a "compensating balance" or deposit in a lending institution either for the express or implied purpose of influencing the extension of credit by ~~such~~ the lending institution to ~~any-such-person~~ producer of title insurance, or for the express or implied purpose of influencing the placement or channeling of title insurance business by ~~such~~ the lending institution. ~~This shall~~ paragraph does not-be-construed-to prohibit the maintenance by a title insurer or agent of ~~such~~ demand deposits or escrow deposits ~~as~~ which are reasonably necessary for use in the ordinary course of the business of ~~such~~ the title insurer or agent.

(h) Paying, or offering to pay, the fees or charges of an outside professional ~~(e.g.,~~ including but not limited to, an attorney, engineer, appraiser, or surveyor), whose services are required by ~~any-such-person~~ producer of title insurance to structure or complete a particular transaction.

(i) Paying, or offering to pay, all or ~~any~~ part of the salary of ~~any~~ an employe of ~~any-such-person~~ a producer of title insurance.

(j) ~~Paying, or offering to pay, any a fee to any such person a~~
~~producer of title insurance for any services unless such the~~ fee bears a
reasonable relation to the services performed. After June 30, 1987, for the
purpose of this paragraph, a payment determined by applying a percentage
amount or formula to the premium paid for title insurance is presumed, unless
rebutted, not to bear a reasonable relation to services performed.

(k) ~~Paying for, or offering to pay for, services by any such person a~~
~~producer of title insurance which if the~~ services are required to be performed
by ~~such the~~ person in his or her capacity as a real estate or mortgage broker
or salesperson or agent.

(l) ~~Furnishing or offering to furnish, or paying or offering to pay~~
~~for, furniture, office supplies, telephones, equipment or automobiles to any~~
~~such person a producer of title insurance, or paying for, or offering to pay~~
for, any portion of the cost of renting, leasing, operating or maintaining any
~~of the aforementioned these~~ items. Marketing and title insurance promotional
items clearly of an advertising nature of token or nominal value, or supplies
such as title insurance application blanks and related forms ~~are not within~~
~~the purview of this prohibition provided~~ prohibited under this paragraph if
they are made available to all ~~such persons~~ producers of title insurance on
the same terms and conditions.

(m) ~~Paying for, furnishing, or waiving, or offering to pay for,~~
~~furnish, or waive, all or any part of the rent for space occupied by any such~~
~~person a producer of title insurance.~~

(n) ~~Renting, or offering to rent, space from any such person a~~
~~producer of title insurance, regardless of the purpose,~~ at a rent which is
excessive when compared with rents for comparable space in the geographic
area, or ~~paying, or offering to pay,~~ rent based in whole or in part on the

volume of business generated by ~~any such person~~ a producer of title insurance except for a bona fide percentage lease based on the total volume of receipts of the ~~title entity~~ insurer when the services of that ~~title entity~~ insurer are offered from that location to the public generally.

(o) ~~Paying for, or offering to pay for, gifts, vacations, business trips, convention expenses, travel expenses, membership fees, registration fees, lodging or meals on behalf of any such person~~ a producer of title insurance, directly or indirectly, or supplying letters of credit, credit cards or any such benefits ~~to any such person for any purpose whatsoever.~~ ~~This prohibition is directed at prohibiting special favors to certain customers.~~ ~~It is~~ This paragraph does not intended to preclude reasonable, moderate and customary business entertainment and trade association activities and expense incurred and recorded by the title insurer or agent in the course of marketing its products and services. ~~Moderate expenditures for food, meals, beverages and entertainment may be made, if correctly claimed and properly substantiated as a legitimate business expense.~~

(p) ~~Paying for, or offering to pay for, money, prizes or other things of value for any such person~~ to, or on behalf of, a producer of title insurance ~~in any kind of a contest or promotional endeavor.~~ ~~This prohibition applies whether or not the offer or payment of a benefit relates to the number of title orders placed or escrows opened with a title insurer or group of such insurers.~~ ~~It~~ This paragraph does not apply to offers or payments to trade associations, or charitable or other functions where the thing of value is ~~in the nature of~~ a contribution or donation rather than a business solicitation.

SECTION 12. Ins 3.32 (4) (q) is repealed and recreated to read:

Ins 3.32 (4) (q) Paying or offering to pay for advertising concerning the title insurer or agent in material distributed or promoted by a producer of title insurance, unless the payment is reasonable compensation for the advertising, is not greater than the amount charged for comparable advertising and any title insurer is permitted to advertise in the material on the same terms and conditions.

SECTION 13. Ins 3.32 (4) (r) is amended to read:

Ins 3.32 (4) (r) Paying for or furnishing, or offering to pay for or furnish any brochures, billboards, or advertisements ~~of such person~~ a producer of title insurance, products or services appearing in newspapers, on the radio, or on television, or other advertising or promotional material published or distributed by, or on behalf of, ~~any such person~~ a producer of title insurance.

SECTION 14. Ins 3.32 (5) is repealed and recreated to read:

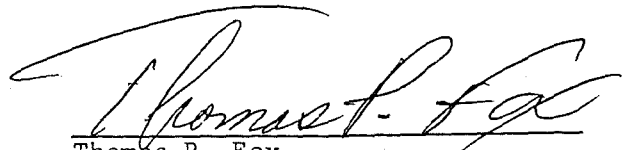
Ins 3.32 (5) REFERRAL OF TITLE INSURANCE APPLICATIONS. For the purpose of sub. (3) (b) and s. Ins 6.61 (2m), an application or order for title insurance is presumed to be referred to an agent by an affiliate producer of title insurance if the affiliated producer of title insurance acts as a broker, agent, lender, representative or attorney in the transaction which results in the application or order and the application was not referred to the affiliate producer by an unaffiliated producer of title insurance.

SECTION 15. Ins 6.61 (2m) is created to read:

Ins 6.61 (2m). After March 31, 1987, each intermediary who is employed by, or is, an affiliate of a producer of title insurance shall maintain records for 3 years for each application or order for title insurance accepted in this state. The records shall state whether the application or order was directly or indirectly referred as provided by s. Ins 3.32 (5) by a producer of title insurance which is an affiliate as defined by s. Ins 3.32 (3) (a), (b) and (c) and the name of each producer of title insurance who is an affiliate and acts as broker, agent, lender, representative or attorney in the transaction which resulted in the application or order. After March 31, 1987, each intermediary who is an affiliate of a producer of title insurance shall maintain a record of gross revenue from operations in this state from title insurance by quarter calendar year which shall separately show gross revenue from operations in this state derived from applications or orders for title insurance directly or indirectly referred by the affiliate.

This rule is effective on the first day of the month following its publication in the Wisconsin Administrative Register as provided by s. 227.22 (2) (intro.), Stats.

Dated at Madison, Wisconsin, this 25th day of September, 1986.


Thomas P. Fox
Commissioner of Insurance



The State of Wisconsin
Office of the Commissioner of Insurance

Thomas P. Fox
Commissioner
(608) 266-3585

DATE: September 25, 1986
TO: Gary Poulson
FROM: M. E. Van Cleave
Assistant Deputy Commissioner of Insurance
SUBJECT: Ins 3.32, Clearinghouse No. 85-159

A handwritten signature in cursive, likely of M. E. Van Cleave, written in dark ink.

Enclosed are two copies of an Order of the Commissioner of Insurance renumbering, amending, repealing, recreating, and creating a rule relating to referral of title insurance by affiliates of lenders, real estate brokers, attorneys, and other producers of title insurance.

MEV:LH:sf
Enclosure
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