

STATE OF ALASKA

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

TONY KNOWLES, GOVERNOR

P.O. BOX 110805
JUNEAU, ALASKA 99811-0805
PHONE: (907) 465-2615
FAX: (907) 465-3422
TDD: (907) 465-5437

BULLETIN 97-05

TITLE INSURANCE ADVERTISING AND INDUCEMENTS CONTRARY TO ALASKA LAW

Recently, an issue came to the attention of the Division of Insurance (Division) that real estate agents/brokers and builder/developers are soliciting, pressuring, or requiring title insurers, title insurance limited producers, or their employees (title insurance entities) to produce or pay for advertising and promotional material focused primarily on the sale of real property. After a review of representative materials, the Division has concluded that the following practices have occurred:

- title insurance entities have been either the sole or contributing payers for advertising or promotional materials in which no mention of title insurance was made;
- title insurance entities have been either the sole or contributing payers for advertising or promotional materials in which only the property listed by a real estate agent/broker was advertised and only the logo of the title insurer or the title insurance limited producer was shown;
- in all cases reviewed, the services of the title insurers and title insurance limited producers were not advertised;
- the payments made by title insurance entities for advertising or promotional materials where their logo appeared, subsidized the advertising content presented by the real estate agent/ broker or builder/developer.

After researching the question and its implications, the Division concludes that it is not permissible for a title insurance entity to engage in any of the conditions listed above. Each of the conditions conflicts with the provisions of AS 21.66.310, which states:

AS 21.66.310. REBATES PROHIBITED. (a) A title insurer, or officer, employee, attorney, or title insurance limited producer of a title insurer, may not pay, allow, or give or offer to pay, allow, or give, directly or indirectly, as an inducement to obtaining a title insurance business, a rebate, reduction, or abatement of a rate or charge made incident to the issuance of the title insurance, a special favor or advantage, money consideration, or other inducement. A charge made incident to the issuance of the insurance is construed to include, without limitation, escrow, settlement, and closing charges.

(b) An insured named in a title insurance policy or any other person directly or indirectly connected with the transaction involving the issuance of a title insurance policy, including, but not limited to a mortgage lender, real estate broker, builder, or attorney, or an officer, employee, agent, representative, or solicitor of a mortgage lender, real estate broker, builder, attorney, or other person, may not knowingly receive or accept, directly or indirectly, a rebate, reduction, or abatement of a charge or premium or a special favor or advantage, or a monetary consideration or inducement

(c) Nothing in this section prohibits

- (1) the payment of fees for services actually rendered as a result of a title insurance transaction; or
- (2) the payment of a commission to a legally appointed title insurance limited producer who issues the policy of title insurance.

It is the view of the Division that AS 21.66.310 prohibits any title insurance entity from paying for any part of a real estate agent/broker's or builder/developer's advertising. This prohibition is applicable to electronic or print advertising including production or payment of radio, TV, newspapers, Multiple Listing Service publications, flyers, signs, mailers, listing cards, and the providing of gift certificates for any product or service. Any advertising of a title insurer or a title insurance limited producer must be separate and stand alone. It may not be a subset or portion of an advertisement of a real estate agent/broker or a builder/developer. This prohibition does not prevent a title insurance entity from placing advertisements in the media if the title insurance entity pays an amount equivalent to that paid by other advertisers in the media and that the advertisement portrays only the services provided by the title insurer or the title insurance limited producer.

This bulletin is notice to all title insurance entities that any activities such as the ones described above are subject to review for administrative action under Alaska law, including AS 21.36 and AS 21.66. Please also note that AS 21.66.310 expressly prohibits a mortgage lender, real estate agent or broker, builder, attorney, or a representative of any of them from directly or indirectly receiving or accepting special favor, advantage, or inducement.

Dated this 12th day of March, 1997.



Marianne K. Burke
Director of Insurance