



STATE OF ALASKA  
DEPARTMENT OF  
**COMMERCE**  
COMMUNITY AND  
ECONOMIC DEVELOPMENT

Division of Insurance

*Sarah Palin, Governor*  
*Emil Notti, Commissioner*  
*Linda S. Hall, Director*

## **BULLETIN B 07-03**

**TO: ALL PRODUCERS AUTHORIZED TO TRANSACT TITLE INSURANCE BUSINESS IN THE STATE OF ALASKA AND OTHER INTERESTED PARTIES**

**RE: THE PURCHASE OF A PRELIMINARY COMMITMENT FOR TITLE INSURANCE BEFORE THE SALE OF THE PROPERTY**

The practice of providing a preliminary commitment for title insurance as soon as a property has been listed has been a controversial subject among title agencies and companies, real estate agents and brokers, and consumers. The division is aware that preliminary commitments for title insurance are being ordered before there is a buyer for the property. Real estate agents allegedly have been telling prospective buyers that the buyer will be responsible for paying a cancellation fee unless the buyer uses the title agency selected by the listing agent. In other cases, the listing sheet states that the seller will pay for title insurance, as long as the title insurance is obtained from a particular title agency.

The division has reviewed the practice and determined that it constitutes an inducement to use a particular title insurance agency and, in some cases, it may be coercion. Both are violations of Alaska law. See AS 21.36.080; AS 21.66.310 Ordering a preliminary commitment for title insurance without a signed earnest money agreement, or other written agreement between seller and buyer to convey the property, may constitute an inducement to select the title insurer chosen by the listing agent because it brings the potential of a cancellation fee into the negotiations should the buyer desire to use another title agency. The potential of a cancellation fee also may have a coercive effect. Closing fees, including title insurance, are the subject of negotiation between the seller and buyer. Where there is an existing preliminary commitment for title insurance, paying the cancellation fee will inevitably pressure the buyer to select the title agency that has been pre-chosen by the seller.

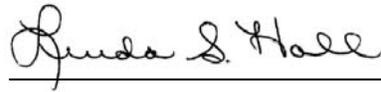
In addition, purchasing a preliminary commitment for title insurance violates the principle that there must be an insurable interest when insurance is purchased. If a preliminary commitment for title insurance is ordered before there is a buyer, there is no one to receive the benefit of the policy. Nor has a lender been selected. For this reason, purchasing a preliminary commitment for title insurance before there is a signed agreement to sell a property violates the principle that the buyer, not the seller, chooses the title insurer.

For these reasons, title insurance producers may not provide a preliminary commitment for title insurance until there is a buyer.

Title insurance producers may provide a description of liens and encumbrances related to a property to an owner, real estate agent, or other interested party, **only if** the recipient pays a reasonable price for it. Title insurance producers **may not** apply the cost of such a description as a credit to the title insurance premium or escrow charges when the property is subsequently sold. Likewise, a real estate agent **may not** pass on this cost to a potential buyer.

If you have questions regarding this bulletin, contact Jeffery Troutt by phone at (907) 465-2518 or by e-mail at [jeffery.troutt@alaska.gov](mailto:jeffery.troutt@alaska.gov)

Dated: June 21, 2007

A handwritten signature in cursive script that reads "Linda S. Hall". The signature is written in black ink and is positioned above a horizontal line.

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Linda S. Hall  
Director