STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 FREMONT STREET
SAN FRANCISCO, CA 94105

Bulletin No. 95-7
July 24, 1995

TO: All Title Insurers, Underwritten Title Companies, Controlled Escrow Companies and Other Interested Persons

SUBJECT: Unlawful Title Rebate Activities

This bulletin serves as a reminder to all title insurers, underwritten title companies, and controlled escrow companies (collectively referred to herein as "title company" or "title companies") of the California Insurance Code's prohibition of unlawful title rebate activities set forth in Insurance Code Sections 12404, et seq. A general description of the prohibition of title rebate activities can be found in the first sentence of subdivision (a) of Insurance Code Section 12404 which reads as follows:

> It is unlawful for any title insurer, underwritten title company or controlled escrow company to pay, directly or indirectly, any commission, compensation, or other consideration to any person as an inducement for the placement or referral of title business.

The person to whom the unlawful title rebate is paid is defined in subdivision (b)(1) of Insurance Code Section 12404 as follows:

> 'Person' means any individual or entity who is any owner or prospective owner, lessee or prospective lessee of real property or any interest therein, any obligee or prospective obligee of an obligation secured or to be secured either in whole or in part by real property or any interest therein, or any person who is acting or who is in the business of acting as agent, representative, attorney, or employee of those persons.

For purposes of this bulletin, a person or persons who fall within the above-captioned definition will be referred to as a "12404 person" or "12404 persons".

This bulletin also gives notice of the Department of Insurance's intention to fully enforce the unlawful title rebate sections of the Insurance Code. Any continuing violation of the unlawful title rebate sections of the Insurance Code by any title company, whether through such title company's officers, non-officer employees or agents, will be deemed by the Department to have been done with

full knowledge of the resulting consequences thereof. Such consequences include, but are not limited to, a monetary fine of five times the amount of each unlawful title rebate as set forth in Insurance Code Section 12409.

This bulletin will not attempt to discuss all possible unlawful title rebate activities as it would be impossible to identify all possible variations of such activities. Rather, this bulletin identifies some of the more prevalent unlawful title rebate activities and activities which could lead to unlawful title rebate violations. This bulletin also discusses the application of relevant sections of the Insurance Code to such activities. The Department hopes to give title companies an accurate and realistic picture of the criteria under which they must properly conduct themselves. Copies of all Insurance Code sections cited to herein are attached to this bulletin for ease of reference.

The list of activities discussed herein should not be construed to be an exhaustive list of all prohibited activities and activities which could lead to unlawful title rebate violations. The Insurance Code Sections referenced herein should likewise not be construed to be exhaustive of all the applicable sections of the Insurance Code.

1. 12404 persons renting spaces within their offices to one title company and disallowing other title companies from soliciting business from such real estate offices.

   A title company's action in merely renting space from 12404 persons is not an unlawful title rebate. The Department's concern in such a situation would be whether the title company is holding itself out as a separate legal entity and business from the 12404 persons, including doing business in the title company's own name in compliance with Insurance Code Sections 880 and 881.

   However, if the title company offers or pays, directly or indirectly, any consideration to the 12404 persons for the purpose of trying to cause such 12404 persons to direct business only to such title company, then such action by the title company would constitute an unlawful title rebate activity pursuant to subdivisions (a) and (c)(2) of Insurance Code Section 12404.

2. Title companies paying the salaries and board of directors' fees of the employees and directors, respectively, of 12404 persons.

   The title companies' payment of such salaries and fees constitutes an unlawful title rebate activity pursuant to subdivisions (a), (c)(1) and (c)(2) of Insurance Code Section 12404.

3. Title companies retaining 12404 persons as full-time salaried

employees, and appointing such persons to the title companies' boards of directors. Some board fees are commensurate with the amount of business given by the 12404 persons.

The Department has long taken the position that the retention of licensed real estate agents or brokers as full-time salaried employees constitutes an unlawful title rebate activity. (See Item 7 of Insurance Commissioner Bulletin No. 80-12.) Such action would be an unlawful title rebate activity pursuant to the present subdivision (a) of Insurance Code Section 12404.

The title companies' payment of board fees if excessive and not commensurate with market value would be an unlawful title rebate pursuant to subdivisions (a) and (c)(2) of Insurance Code Section 12404.

The payment of board fees which are commensurate with the amount of business given by the 12404 person strongly suggests that it is a payment of either an unlawful referral fee or commission pursuant to Insurance Code Sections 12408.5 and 12412, and an unlawful title rebate activity pursuant to subdivisions (a) and (c)(2) of Insurance Code Section 12404.

4. Title companies paying for radio, newspaper and other forms of advertisement of 12404 persons.

Title companies' action in paying for radio, newspaper and other forms of advertisement of 12404 persons constitutes an unlawful title rebate pursuant to subdivisions (a), (c)(1) and (c)(2) of Insurance Code Section 12404. Such prohibition does not apply to joint advertising efforts by both a title company and a 12404 person whereby each pays for its own correct portion of the advertising costs.

5. 12404 persons such as real estate companies, with escrow coordinators within their offices who are employees of title companies, charging their agents a lower fee for such escrow coordination services if the agents use certain title companies than if they use other title companies.

If the fees being charged by the real estate companies do not go to the title companies whose employees provided the services, then the actions of the title companies in providing the escrow coordinators would constitute unlawful title rebate activities pursuant to subdivisions (a), (c)(2) and (c)(6) of Insurance Code Section 12404.

If the escrow coordinators who are employees of the title companies perform any service unrelated to the business of title insurance, such as doing any work normally performed by realtors, then the title companies which furnished such escrow coordinators would be deemed to have exceeded the scope of their authorized activities in violation of subdivision (c) of

Insurance Code Section 700, subdivision (a)(3) of Insurance Code Section 12389, and Insurance Code Section 12389.2. Also, such action of the title companies would constitute an unlawful title rebate activity pursuant to subdivisions (a), (c)(2) and (c)(6) of Insurance Code Section 12404.

The action of the real estate companies in charging their agents different fees depending on which title companies the agents use, or merely having title companies employees on their premises, suggests that they have a vested interest in certain title companies, which, in turn, strongly suggests that the title companies have engaged in unlawful title rebate activities to induce the real estate companies to so act.

6. Title companies using different rate schedules to quote lower rates than those shown in the schedules filed with the Department pursuant to Insurance Code Section 12401.1.

   Pursuant to Insurance Code Section 12401.7, title companies may not use rates which they have not previously filed with the Department. Title companies' actions in rebating any portion of the fees or charges set forth in the filed schedules would constitute unlawful title rebate activities pursuant to subdivision (a) of Insurance Code Section 12404 and Insurance Code Section 12405.

7. Title companies buying equipment for 12404 persons.

   Title companies' actions in buying equipment for 12404 persons constitute unlawful title rebate activities pursuant to subdivisions (a), (c)(1) and (c)(2) of Insurance Code Section 12404.

8. 12404 persons obtaining an ownership interest in title companies at below market value cash or noncash consideration.

   If the shares of stock of the title companies are being transferred to 12404 persons for no, or below market value, consideration, then such action would constitute an unlawful title rebate activity pursuant to subdivisions (a) and (c)(2) of Insurance Code Section 12404. Such prohibition does not apply to the obtainment of ownership interest in title companies for the proper amount of noncash consideration.

9. Title companies' action in producing, or paying for the costs of production of, flyers containing information on real property to be used and distributed by 12404 persons.

   Title companies' action in producing, or paying for the costs of production of, flyers containing information on real property to be used and distributed by 12404 persons constitutes an unlawful title rebate pursuant to subdivisions (a), (c)(1), (c)(2) and (c)(6) of Insurance Code Section 12404.

Questions regarding this bulletin may be addressed to:

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