

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
100 Van Ness Avenue
San Francisco, CA 94102

Bulletin No. 81-8
December 30, 1981

TO: All Licensed Underwritten Title Companies and
All Insurers Certificated to Transact the Class of Title Insurance

SUBJECT: Controlled Business

The potential risk of anti-competitive behavior involved in dealings between related entities as well as possible reverse competition which could result to the detriment of the ultimate consumer prompts the issuance of the following rules. These shall be applicable immediately to the issuance and retention of a securities permit and a license to operate as an underwritten title company, or a Certificate of Authority to act as a title insurer.

Any applicant for or holder of a securities permit and license to operate as an underwritten title company, or a Certificate of Authority to act as a title insurer shall indicate its desire to compete in the marketplace for title insurance in each county in which it seeks to or does conduct the business of title insurance. The failure to so indicate shall constitute grounds for denial or revocation of such application, permit, license or Certificate of Authority.

Competition will be deemed to exist when the applicant, permittee, licensee or holder of the Certificate of Authority derives fifty percent (50%) or more of its title orders from sources other than those which are either directly or indirectly controlled by or under the influence of said applicant, permittee, licensee or certificate holder.

A controlled business source means (1) A person or entity defined in Insurance Code Section 12404 who owns, directly or indirectly, any of the issued and outstanding stock of an applicant, permittee, licensee or certificate holder; or (2) An agent or employee of any such person or entity who receives a salary, commission or other consideration for his or her services in connection with such person or entity's real estate related activities, or (3) A corporation, partnership, trust or other business entity that holds an ownership interest, either directly or indirectly, in any such person or entity.

A person or entity shall be deemed to own stock in an applicant, permittee, licensee or certificate holder if the stock is held by (1) Such person or entity, or (2) a member of such person's immediate family or (3) a corporation, partnership, trust or other business entity in which such person or entity holds an ownership interest, either directly or indirectly, or through another business entity or entities.

With respect to a title insurer whose stock is traded on a national securities exchange, or a title insurer which is part of an insurance holding company system, as defined in Section 1215 of the Insurance Code, whose shares are traded on a national securities exchange, controlled business source, shall not apply to a person or entity having an ownership interest in such a title insurer which is less than that required to come within the presumption of the term control, as defined in Section 1215 of the Insurance Code; provided, however, a title insurer which is part of an insurance holding company system shall deem any business transaction with another entity within the system as emanating from a controlled business source for reporting purposes.

An applicant shall demonstrate that its plan of operation and intended course of business conduct will not involve reliance for more than 50% (fifty percent) of its business (closed title orders) from controlled business sources.

Each permittee, licensee or certificate holder, hereafter referred to as "entity," shall make such submissions as are required by the Department to enable the Department to determine the nature and extent of the entity's efforts to actively compete in each county in which it transacts its business.

In order to assure that competition exists, the entity shall maintain records of its title orders sufficient to indicate the source of such title orders. Competitive behavior shall be measured by the source of closed title orders in each county in which such entity engages in the title business.

A title order from a controlled business source is one emanating from a controlled business source whether such source is acting in the capacity of a principal, lender, representative or agent of any of the parties to the transaction, or any other person or entity with which the reporting entity has an agreement, written or otherwise, whereby title orders are traded or otherwise exchanged in order to achieve compliance with this bulletin.

Within ninety days following the end of each business year, as established by the entity, the entity shall file with the Commissioner, and any entity with which it maintains an underwriting agreement, a verified report executed by the Chief Executive Officer or his designee under penalty of perjury, stating the percent of closed title orders for each county originating from controlled and non-controlled business sources. Each holder of a Certificate of Authority who maintains an underwriting agreement with such entity required to report shall, within 30 days after receipt of such report, file with the Commissioner a verified statement, signed by the Chief Executive Officer or his designee under penalty of perjury, that such report is substantially correct or that insufficient information is contained in the report to enable an opinion to be formed concerning the correctness of the report.

Every stock certificate evidencing any of the shares authorized by a securities permit, issued to an underwritten title company whose operation includes more than 10% controlled source title orders, whether upon initial issuance or upon any transfer thereof, shall bear upon its face a legend, prominently stamped or printed in ten point type, reading as follows:.

"IT IS UNLAWFUL TO CONSUMMATE A SALE OR TRANSFER OF THIS SECURITY OR ANY INTEREST THEREIN, OR TO RECEIVE ANY CONSIDERATION THEREFOR, WITHOUT THE PRIOR WRITTEN CONSENT OF THE COMMISSIONER OF INSURANCE OF THE STATE OF CALIFORNIA."

The holder or persons entitled to the securities shall not consummate a sale or transfer the securities, or any interest therein, or receive any consideration therefor, without the prior written consent of the Commissioner of Insurance; except that transfers may be effected without such consent to the issuer or pursuant to the order or process of any court, or to the transferor's ancestors, descendants, or spouse, or any custodian or trustee for his or her account on condition that any certificates evidencing this security issued to such transferee contain this legend.

Every such entity shall within thirty days following expiration of the securities permit or within thirty days following sale of the authorized securities, whichever occurs first, file with the Commissioner a verified report, executed under penalty of perjury by the Chief Executive Officer or his or her designee, of the transactions accomplished in conformity with the terms of the securities permit. The report shall set forth the number of shares of capital stock issued, the recipient thereof, the consideration paid and shall state whether the conditions of the securities permit have or have not been complied with. In the event of noncompliance, a detailed statement shall be incorporated in the report setting forth the reasons for such failure to comply.

Upon satisfactory demonstration to the Department that less than five percent (5%) of the business it transacts emanates from controlled business sources, an entity shall be relieved of reporting on its own operation but not from the report required relative to a reporting entity with which it has an underwriting agreement.

Failure of an entity to comply with any of the conditions set forth in this bulletin may result, after notice and hearing, and upon findings of such failure to comply with the conditions set forth herein, in the Commissioner revoking or suspending the permit, license or Certificate of Authority of such entity or in the taking of other appropriate disciplinary action.

A handwritten signature in black ink that reads "Robert C. Quinn". The signature is written in a cursive, slightly slanted style.

ROBERT C. QUINN
Insurance Commissioner