



RICARDO LARA
CALIFORNIA INSURANCE COMMISSIONER

BULLETIN 2022-8

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

FROM: Insurance Commissioner Ricardo Lara

DATE: July 27, 2022

RE: Unlawful Title and Escrow Inducement Activities

The California Department of Insurance (“Department”) last issued a Bulletin regarding unlawful title and escrow inducement activities in 1996. In 2009, California Insurance Code § 12404, the principal California statute regulating such activities, was amended to limit more strictly expenditures for 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 an agent, representative, attorney, or employee of those persons (jointly referred to herein as “12404 persons”).

Section 12404 also provides in relevant part that 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 regardless of whether an actual placement or referral of title business occurs.

The past quarter-century has seen the explosion of the internet and social media as a business and marketing tool with dramatic implications for the title and escrow industry, as well as the Department’s oversight responsibilities. The scope of unlawful inducement activities continues to grow in novel ways, resulting in continued consumer complaints to the Department, confusion regarding acceptable conduct within the title and escrow industries, and increased Department enforcement actions. Lastly, the federal government continues to refine the Real Estate Settlement Procedures Act (RESPA), which the Department shares the responsibility of enforcing.

This Bulletin provides updated guidance to the title and escrow industries regarding the Department's general approach and priorities in enforcing the title and escrow anti-inducement provisions found in state and federal law, as well as applications to specific activities.

Historical Basis for Anti-Inducement Regulation

Before outlining the Department's updated guidance, it is important to review the basis for the statutory scheme and the purpose of the regulation of the title and escrow industries. Property buyers or sellers rarely choose the provider of a title insurance policy. This decision is usually made by a consumer's agent or representative. While such agents or representatives are required to consider primarily their principal's best interest, regulation is necessary to ensure agents or representatives are not recommending policies based on the prospect of receiving a personal benefit.

The Department issued Bulletin Nos. [80-12](#) and [96-10](#) to apply the general principles of title and escrow anti-inducement regulation to specific situations. These Bulletins remain in effect to the extent they are not preempted or otherwise rendered obsolete by the enactment or issuance of applicable statutes, regulations, or other guidance, or a change in the practices described therein due to the passage of time.

Principles of Enforcement

The Department's title and escrow enforcement priorities are guided by three principles:

1. Adherence to the explicit text of state and federal anti-inducement laws, and the reasonable application of such statutes to specific actions.
2. Ensure consumer protection consistent with the Department's historic mandate to maintain a competitive title and escrow market and its vision of insurance protection for all Californians.
3. Deter activities by title and escrow licensees to provide "things of value" or other inducements to 12404 persons that would result in a competitive advantage to the 12404 persons, or licensees, in connection with real estate transactions. This is consistent with the Department's goal of ensuring a competitive and sustainable title and escrow market and the main goal of Section 12404 when it was originally proposed in 1949 (as stated in a contemporaneous memo from the California Land Title Association): "Free and fair competition is the intent and purpose of this measure."

Application to Specific Activities

While the above-referenced principles provide guidance regarding Department enforcement priorities, the constantly evolving nature of the title and escrow industry continues to create novel situations for licensees. The Department's positions regarding the following specific activities are informed by repeated inquiries from the title and escrow industry and recent Department enforcement actions. Many activities will nevertheless still require analysis on a case-by-case basis:

- **Networking groups**

Licensees are permitted to be members of an association, organization, or collective offering 12404 persons things of value or competitive advantages ("Networking Groups"), including, but not limited to, relationship-building, referrals, sales advice, marketing tips, and mentorship, but licensees should limit their membership role in Networking Groups to discussions of matters exclusively related to the business of title insurance, as defined in Insurance Code § 12340.3. Licensees should play no role in a Networking Group's operations or membership decisions.

- **Independent business ventures**

Title marketing representatives may engage in business ventures independent of their employment with a title company, but such ventures may not provide "things of value" or other inducements to 12404 persons that would result in a competitive advantage to the 12404 persons in connection with real estate transactions. Acceptable ventures are those that are exclusively related to the business of title insurance, or alternatively, those that have no connection with real estate transactions. The Department will closely scrutinize ventures that claim to help 12404 persons increase their business or generate revenue. Owners or operators of specific ventures that have no connection with real estate transactions may wish to consider providing a disclaimer that the services offered by the venture are not intended for 12404 persons.

- **Social media**

Social media has become omnipresent in the past decade and its further evolution is inevitable. While there is nothing inherent to social media that requires the Department to craft specific guidance, its ease of use has resulted in an increased number of inquiries to the Department as well as the creation of evidence in support of enforcement actions. Licensees should consider social media in the same way as offline conduct and observe the requirements of the anti-inducement laws in whatever media they utilize.

- **Charity events**

There is no indication that the intent of the anti-inducement laws was to prohibit licensees from attending or sponsoring events held by legitimate charitable organizations. If the specific organization holding the event has a 12404 person in its leadership or is involved extensively in the event's planning, licensees should exercise care in attendance or sponsorship so that it cannot be characterized as an inducement.

- **Conferences**

Licensees are permitted to attend conferences on any topic and can present on matters related to the business of title insurance. Licensees may also sponsor conferences on topics that have no connection with real estate transactions as long as the purpose of the conference is not to appeal to or benefit 12404 persons.

- **Promotional items**

Insurance Code § 12404(d)(1) specifically permits promotional items with a permanently affixed company logo of a licensee valued at not more than \$10 each. The Department historically has viewed content created by licensees that has no relationship to the business of title insurance but is otherwise publicly available as a violation of the anti-inducement laws. This includes flyers featuring sports team schedules, fire safety information, and neighborhood events, among many other topics. Content of this type may, however, be characterized as a promotional item, or otherwise not providing a competitive advantage in connection with real estate transactions. Further, such content alone is typically not a "thing of value," and the Department generally will not consider such content to be a violation of the anti-inducement laws.

- **Realtor associations**

Realtor associations are considered to be 12404 persons, and are subject to the same restrictions placed upon conduct with individual 12404 persons. This is a continuation of the policy expressed in Bulletin 80-12: "This term [12404 person] applies equally to individuals as well as to formal or informal groups or associations of such 12404 persons."

Conclusion

All interested persons are encouraged to conform their practices to the principles outlined in this Bulletin and licensees are also encouraged to review the latest version of the California Land Title Association Anti-Rebate Law Training Manual for further guidance.

Questions concerning this Bulletin may be directed to Eugene Kalinsky, title and escrow enforcement attorney for the Department, at Eugene.Kalinsky@insurance.ca.gov.