STATE OF CALIFORNIA

Dave Jones, *Insurance Commissioner*

DEPARTMENT OF INSURANCE

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November 7, 2013

Taras Kick, Esq.
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201 Wilshire Boulevard, Suite 350
Santa Monica, CA 90401

Re: Legal Opinion Regarding Requirement That Third-Party Courier Fees Be Included in Rate Filings

Dear Mr. Kick:

This is a legal opinion letter pursuant to Insurance Code section 12921.9.[1]

I. Requested Opinion

You requested a legal opinion on the following:

> Must title insurers, underwritten title companies and controlled escrow companies include in rate filings with the Commissioner amounts charged to customers for the services of third party couriers, messengers, overnight or other delivery services, such as Federal Express, UPS and DHL, to be allowed to charge, or pass on charges to, customers for such services?

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[1] Insurance Code section 12921.9 provides:

> (a) A letter or legal opinion signed by the Commissioner or the Chief Counsel of the Department of Insurance that was prepared in response to an inquiry from an insured or other person or entity and that discusses either generally or in connection with a specific fact situation the application of the Insurance Code or regulations promulgated by the commissioner shall be made public. The department may redact the name, address, policy number, and other identifying information regarding a particular insured or other person or entity from the letter or legal opinion when it is made public.
>
> (b) A letter or legal opinion made public pursuant to this section shall not be construed as establishing an agency guideline, criterion, bulletin, manual, instruction, order, standard of general application, rule, or regulation, as those terms are described in Sections 11340.5 and 11342.600 of the Government Code.

II. Answer

Yes.

III. Analysis

A. Title Insurers, Underwritten Title Companies and Controlled Escrow Companies Must File Rates with the Commissioner

The Commissioner regulates title rates "to promote the public welfare," "encourage competition . . . in the business of title insurance on a sound financial basis," and ensure that rates are not "excessive, inadequate or unfairly discriminatory." (Ins. Code § 12401.) Maximum information about title rates benefits consumers and is necessary for meaningful competition in the title industry.

"The business of title insurance includes the performance of any service in conjunction with the issuance or contemplated issuance of a title policy, including but not limited to, the handling of any escrow, settlement or closing in connection therewith." (*Id.* § 12340.3.)

Central to the regulatory framework for title rates is that "every title insurer, underwritten title company, and controlled escrow company shall file with the commissioner its schedules of rates . . . ." (*Id.* § 12401.1.) Every schedule of rates "shall set forth the *entire charge to the public* for each type of title policy included within such schedule." (*Ibid.* [emphasis added].)

B. Third-Party Courier Fees Are Part of Rates

"'[R]ate' or 'rates' means the charge or charges, whether denominated premium or otherwise, *made to the public by* a title insurer, an underwritten title company or a controlled escrow company, for all services it performs in transacting the business of title insurance." (Ins. Code § 12340.7 [emphasis added]; *see also id.* § 12401.1 ["[e]very filing . . . shall indicate the character and extent of the coverages *and services* contemplated."] [emphasis added].) Third-party courier fees passed on to a customer are charges to the public and therefore part of the rate.

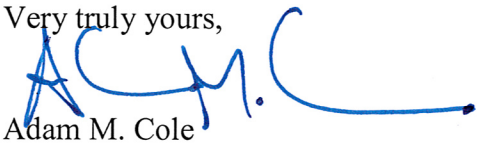
C. Third-Party Courier Fees Are Not Excluded From Rate Filing Requirements

There is no filing exemption for courier fees. "Miscellaneous charges" are excluded from the definition of "rates." (Ins. Code § 12340.7.) But "miscellaneous charges means conveyancing fees, notary fees, inspection fees, tax service contract fees and such other fees as the commissioner by regulation may prescribe." (*Ibid.*) Courier fees are not conveyancing fees, notary fees, inspection fees, or tax service contract fees. (See, e.g., Evid. Code § 451(e) & (f).) The Commissioner has not prescribed by regulation additional fees or charges as miscellaneous charges. Courier fees therefore are not exempt from the definition of rates and the requirement of rate filing.

* * *

The requirement that title insurers, underwritten title companies and controlled escrow companies include third-party courier fees in rate filings furthers the Legislature's intent to "promote the public welfare" by making costs transparent and ensuring meaningful competition in the title insurance industry.

Very truly yours,



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