

**CONCISE EXPLANATORY STATEMENT**  
**Referral of Title Insurance Business Rules**  
**R# 2008-21**

**Background**

Faced with reports of abuses within the title insurance industry of providing inducements to third parties in order to refer title insurance business to a particular title company, the Commissioner adopted WAC 284-30-800 in 1988 and amended it in 1990 in an attempt to curb these illegal inducements.

Despite these efforts the Commissioner received reports that these inducements were continuing. As a result in 2006, the Commissioner undertook an investigation of a number of title companies. A report of the investigation was issued in October of 2006 entitled "An Investigation into the Use of Incentives and Inducements by Title Insurance Companies" and is incorporated herein by reference. The investigation found that the use of inducements and incentives by title companies to obtain title insurance business in Washington appeared to be widespread and pervasive.

In response to these findings, the Commissioner appointed a Task Force to review the title insurance industry. The Task Force issued a report in September of 2007, making five key recommendations to the Commissioner, one of which was replacing WAC 284-30-800 with more specific guidelines for permitted title industry practices. Legislation was passed during the 2008 session to implement additional regulatory changes through statute.

Included in the legislation that was enacted is a section prohibiting title companies from giving things of value to persons in a position to refer or influence the referral of title insurance business, except as permitted by rule of the Commissioner. Rule 2008-21 is being adopted to implement the legislation and the recommendations of the Task Force.

**Differences between the proposed rules filed with the CR-102 and the adopted rule:**

A new subsection was added to WAC 284-29-205 defining commercial property.  
In the third line of WAC 284-29-230(1)(c) "in a single day" was deleted and "during a single event" was inserted.  
WAC 284-29-260(10) was amended to distinguish between the time limits for commercial and non-commercial real property as to the presumption of when a title commitment has cancelled.

**Stakeholder comments about the rule making:**

**Comments received after OIC filed the CR 101.**

**Public comment:** The guidelines should be clear & specific.  
**Commissioner response:** The guidelines should be clear & specific.

**Public comment:** Real estate information – new rules should be very specific as to what types of real property information may be furnished by a title company without charge.  
**Commissioner response:** Commissioner agrees.

**Public comment:** Property data should be available to the general public on the title company's website at no charge, make as an exception to the rule.  
**Commissioner response:** Commissioner disagrees. Although the information may be on the website, it is not generally being provided for the use of consumers (see following comment about advertising to the general public with which the Commissioner agrees) but rather for the benefit of the providers as a method to give such information to providers as an inducement to get title insurance business.

**Public comment:** Co-advertising is being unfairly exploited by some major title companies; if the producer were not in a position to refer business to the title company, the title company would not co-advertise. The title industry has acknowledged over the years that advertising to the general public is a waste of time.  
**Commissioner response:** Commissioner agrees with this statement.

**Public comment:** Ancillary services – question whether title companies are pricing properly and some services are provided upon condition that recipient must use that title company.

**Commissioner response:** Commissioner agrees with this statement, which was part of his findings in several investigations of the title insurance industry.

**Public comment:** Selling items of value- sale by title companies of items of value to producers (such as postcards, flyers, flyer boxes, farm lists, etc.) should be prohibited. Or OIC should adopt rule that such products are not underpriced as an inducement to get business.

**Commissioner response:** Commissioner agrees with this statement.

**Public comment:** Record keeping of customer expenditures should be compatible with Excel or Access for a standardized procedure.

**Commissioner response:** Record keeping by the title companies should be as simplified as possible, therefore the title companies should be able to use whatever method works most effectively for that company. The Commissioner does not see any regulatory benefit in requiring a specific method, as long as the records can be reviewed and audited.

#### Comments received after OIC distributed the first draft of rules on October 6, 2008

##### GENERAL COMMENTS ON THE RULE

**Public comment:** Several of the proposals have limits on how much a title company can spend on producers over a 12 month period. These limits should be imposed on a branch license basis, using the example of the resulting limit on trade associations, and asserting that the trade association would lose title funding in favor of the local title branches. If 12 month rule maintained should be done on a calendar basis.

**Commissioner response:** The Commissioner made changes to the proposed rules to address the comment by making the limits apply on a calendar year basis and branch license basis.

**Public comment:** Limits will provide unintended competitive advantage to larger brokerage and other firms, and real estate agents will lose important educational events or other title company funded activities.

**Commissioner response:** The Commissioner realizes that larger companies may have greater resources to give things up to the limits proposed. However, the rules uniformly apply to title companies, regardless of the size of the company.

##### GENERAL COMMENTS ON AFFILIATED BUSINESS ARRANGEMENTS (AfBAs)

**Public comment:** Broad in scope and discriminate against AfBAs.

**Commissioner response:** The Commissioner disagrees with this comment. These rules apply to all title companies, whether or not they are a member of an AfBA.

**Public comment:** Much effort was put into negotiating SSB 6847 (Chapter 110, Laws of 2008) in order to preserve the right for title companies to engage in RESPA compliant AfBAs with other settlement service providers. The rules do not preserve it and should.

**Commissioner response:** The Commissioner disagrees. Although the real estate brokerage community put forth much effort into negotiating SSB 6847 (Chapter 110, Laws of 2008) to preserve the right for title companies to engage in RESPA compliant AfBAs with other settlement service providers, the legislation placed restrictions on AfBAs. These rules do not prohibit actions by title companies and AfBAs that are permitted by the legislation, but make the rules applicable to all title companies including AfBAs ensuring that AfBAs are not given an unfair advantage.

**Public comment:** Draft rules are so broad in effect that it is not clear that an AfBA would be permitted.

**Commissioner response:** The proposed rule was amended to delete the definition of affiliate and the use of affiliate throughout the rule.

**Public comment:** Rule should make clear that participation in a RESPA compliant AfBA will not violate the rules.

**Commissioner response:** The Commissioner disagrees with this statement. The mere fact that a title company is a member of a RESPA compliant AfBA, should not allow a title company that is a member of an AfBA to participate in otherwise prohibited activities for title companies, giving the AfBA member an unfair advantage.

**Public comment:** Section 3 of SSB 6847 (RCW 48.29.210) makes it clear that the legislation did not intend to regulate such "affiliates."

**Commissioner response:** The Commissioner disagrees. Section 3 of SSB 6847 (RCW 48.29.210) bars title companies and their agents and representatives from providing things of value to persons in a position to influence the referral of title insurance business. If a title company uses an affiliate in an attempt to circumvent the prohibitions of Section 3 of SSB 6847 (RCW 48.29.210), that is a violation of the statute. The 2008 law clearly regulates affiliates of title companies, as affiliates would be treated as representatives under the law, if used to provide things of value to influence the referral

of business. The proposed rule was amended to delete the definition of affiliate and the use of affiliate throughout the rule.

#### COMMENTS ON WAC 284-29-200 SCOPE AND PURPOSE

**Public comment:** Clarify that doesn't affect AfBAs, does not prohibit AfBAs.

**Commissioner response:** The proposed rule was amended to delete the definition of affiliate and the use of affiliate throughout the rule.

**Public comment:** Scope & Purpose of the rule as to affiliates goes beyond the Commissioner's rule making power under the statute.

**Commissioner response:** The Commissioner disagrees with this comment. If a title company uses an affiliate as a representative of the title company in an attempt to circumvent the prohibitions of Section 3 of SSB 6847 (RCW 48.29.210), then it is clearly within the Commissioner's rule making power to regulate this behavior.

**Public comment:** (2) third line move "the" to after influence.

**Commissioner response:** The Commissioner agrees, and amended WAC 284-29-200(2).

**Public comment:** Rules purport to regulate more than title companies, particularly when defining affiliates. This is beyond the scope of rule making.

**Commissioner response:** The Commissioner disagrees with this comment. If a title company uses an affiliate as a representative of the title company in an attempt to circumvent the prohibitions of Section 3 of SSB 6847 (RCW 48.29.210), then it is clearly within the Commissioner's rule making power to regulate this behavior. However in order to provide some clarification the proposed rule was amended to delete the definition of affiliate and the use of affiliate throughout the rule.

**Public comment:** The rules need to specifically address that the giving of things of value as provided in Section 13 of SSB 6847 (RCW 48.29.213) is lawful and that agreements in this regard would not violated the rules.

**Commissioner response:** The Commissioner agrees and subsection (5) was added to WAC 284-29-200 to address this concern.

**Public comment:** Delete paragraph 2 on page 1 of the October 6 draft.

**Commissioner response:** The Commissioner disagrees. Paragraph 2 merely reiterates the language of SSB 6847 (Chapter 110, Laws of 2008).

**Public comment:** It previously read, "(2) 2008 c 110 s 3 [replace with RCW section when available] not only applies to title insurance producers or associates of producers, but to every person in position, directly or indirectly, to refer or the influence referral of title insurance business." If Recommendation 1 is adopted, the old paragraph 2 needs to be eliminated to be consistent with the updated definition of a Producer.

**Commissioner response:** The Commissioner disagrees. The definition of producer is contained in the statute (RCW 48.29.010(2)(e)).

#### COMMENTS ON WAC 284-29-205 DEFINITIONS

**Public comment:** "Person" should not include trade associations they should be treated differently. Should make sure there is a difference in the rule between definition of person and association, not a conflict between association and trade association. (14) Trade association – trade associations are not producers of title business nor influence the referral of title business.

**Commissioner response:** The Commissioner disagrees that trade associations do not have an influence on the referral of title insurance business. An inducement can be anything that might motivate and therefore induce a referral of business; without its members, a trade association is a shell. In communicating or offering anything to a trade association, the thing is being offered to each member *by* association. Trade associations are treated differently, i.e. rather than an outright prohibition on giving anything to trade associations, title companies are permitted to give things of value to trade associations, but with limits.

**Public comment:** (2) Strike definition of affiliate and other reference to affiliate from rules.

**Commissioner response:** If a title company uses an affiliate as a representative of the title company in an attempt to circumvent the prohibitions of Section 3 of SSB 6847 (RCW 48.29.210) then the Commissioner may prohibit such behavior. However, the Commissioner made changes to clarify that appropriate affiliate interactions are not prohibited. However in order to provide some clarification the proposed rule was amended to delete the definition of affiliate and the use of affiliate throughout the rule.

**Public comment:** (2) If a, for instance, real estate agency or its principal owns 15% of a Title Company, would that "controlling interest" make the agency an affiliate of the Title Company? And if the agency is an affiliate, would that prevent the agency from

providing its agents financial incentives to send title business to the Title Company?

**Commissioner response:** Section 10 of SSB 6847 (Chapter 110, sec. 10, Laws of 2008) prohibits an affiliated agency from providing its agents financial incentives to send business to its affiliated title company. Therefore, anything in these rules that prevents such payments complies with the statute.

**Public comment:** Definition of affiliate should be stricken. Could make a real estate brokerage company who owns a title company a title company under the rule.

**Commissioner response:** It is not the intent of these rules not to make a real estate brokerage company an affiliate of a title company. However, Section 3 of SSB 6847 (RCW 48.29.210) regulates title companies and their agents and representatives from providing things of value to persons in a position to influence the referral of title insurance business. If a title company uses an affiliate as a representative of the title company in an attempt to circumvent the prohibitions of Section 3 of SSB 6847 (RCW 48.29.210), then the Commissioner may regulate the behavior of the title company. However in order to provide some clarification the proposed rule was amended to delete the definition of affiliate and the use of affiliate throughout the rule.

**Public comment:** Amend paragraph 9 on page 2 of the October 6 draft to read: (9) "Producers of title insurance business" or "producer" means real estate agents and brokers who maintain agency relationships with buyers or sellers of real property as defined in RCW 18.86.010(2), lawyers, mortgagees, mortgage loan brokers, financial institutions, escrow agents, persons who lend money for the purchase of real estate or interests therein, building contractors, and real estate developers and subdividers. This recommendation removes the broad reference to "any other person who is or may be in a position to influence the selection of a title insurer or title insurance agent whether or not the consent or approval of any other person is sought or obtained with respect to the selection of the title insurer or title insurance agent", which would have unintentionally ensnared newspapers, blogs, message boards, Zillow, Google, Facebook, MLSowners.com and other real estate advertising companies that do not enter into agency relationships, ForSaleByOwner.com, for sale by owner magazines and websites, and any website that accepts search engine driven advertising. All of these entities have influence in the sense that they publish information that educated consumers can use to make informed choices about title insurance. It also clearly defines the role of the real estate licensee and uses the definition already used in Washington's Law of Real Estate Agency. We are not in a position to offer an opinion on the role of lawyers, mortgagees and the other professions mentioned in the draft.

**Commissioner response:** The definition of producer in the rules is taken from the statute (RCW 48.29.010(2)(e)).

**Public comment:** (9) Definition of producer – includes person who influences placement of title insurance business, does this include newspapers, google, etc.?

**Commissioner response:** The Commissioner disagrees with such an interpretation. However, in order to clarify the issue, the Commissioner added WAC 284-29-215(4).

**Public comment:** (12) Extensions of credit – should consider bona fide loans between AfBAs. (12) Need to make sure that no definition gets in the way of lawful AfBA payments.

**Commissioner response:** The Commissioner agrees and added WAC 284-29-200(5) to address this concern.

**Public comment:** (13) Definition of title company includes affiliates, shouldn't include true AfBAs. (13) Definition of title company must exclude any reference to an affiliate, owner, shareholder, member, partner, etc.

**Commissioner response:** Section 3 of SSB 6847 (RCW 48.29.210) regulates title companies and their agents and representatives from providing things of value to persons in a position to influence the referral of title insurance business. If a title company uses an affiliate as a representative of the title company in an attempt to circumvent the prohibitions of Section 3 of SSB 6847 (RCW 48.29.210), then the Commissioner may regulate the behavior of the title company. However in order to provide some clarification the proposed rule was amended to delete the definition of affiliate and the use of affiliate throughout the rule.

#### COMMENTS ON WAC 284-29-210 REAL PROPERTY INFORMATION

**Public comment:** Good rule defines what title company can give.

**Commissioner response:** Commissioner agrees.

**Public comment:** A "certified legal description" should be added as an additional item that title companies can provide at no charge.

**Commissioner response:** A "certified legal description" presumably would include some type of guarantee as to its accuracy. As such, a "certified legal description" would constitute an insurance product and require an appropriate form and rate filing.

**Public comment:** In (1) after sub (e) change "or" to "and/or", in the 7<sup>th</sup> line delete "only", and in (3)(a) second line, change "which" to "all" so that it is clear that any one or all six of the items listed in (1) may be provided at no charge.

**Commissioner response:** Commissioner agrees and amended WAC 284-29-210.

**Public comment:** A title company should be allowed to provide CC&Rs no charge and a definition of CC&Rs should be set forth.

**Commissioner response:** Commissioner agrees and WAC 284-29-210(1)(d) was added to the proposed rules.

**Public comment:** Real estate contracts should be included in the information that can be provided at no charge.

**Commissioner response:** Commissioner agrees and WAC 284-29-210(1)(b) was amended to include real estate contracts.

**Public comment:** Clarify what type of map may be provided at no charge.

**Commissioner response:** Commissioner agrees and WAC 284-29-210(1)(c) was amended to provide clarification.

**Public comment:** Tax information should be limited to the current assessed value, current tax assessment, taxes paid current, is property subject to special tax deferral or treatment, and any information on special assessments or levies, and otherwise be unavailable.

**Commissioner response:** Commissioner disagrees, providing additional tax information is beneficial to consumers and the providing of this information in the past has not been a source of problems.

**Public comment:** (4) Why limit to just one document per property? For example what about being able to give a copy of two or more easements on the property or other recorded documents on the specific property. Under 4 we request clarification as to the intent of item 4. Specifically, is it permissible to provide two or more separate documents, both affecting the same parcel of Real Property? For instance, assuming compliance with the requirements of 4 (a), if a customer requests copies of all easements affecting "Lot 3", or even two easements affecting "Lot 3", is it permissible to provide the requested documents?

**Commissioner response:** While the Commissioner understands the issue raised by this comment, he is concerned that providing a broad permission to give away such copies may result in the title companies in essence providing a free title commitment.

**Public comment:** In subsection(5) title companies should be allowed to give things of value to consumers and the general public.

**Commissioner response:** Although the Commissioner generally agrees that providing information to consumers and the general public is beneficial, he is concerned that title companies and producers will use this as a method of providing the information for free to the producer under the guise that it is being provided to a consumer or the general public, since this type of behavior has happened before.

**Public comment:** Under 5 we request clarification as to whether we can include pre-addressed labels with a "farm package" that we sell to a producer. We note that labels are among the items prohibited to be sold under proposed WAC 284-29-260(7)(m).

**Commissioner response:** Commissioner agrees and WAC 284-29-210(5) and WAC 284-29-260(7)(m) were amended to provide that title companies may include labels, provided the title company is paid for them.

**Public comment:** "Also under 5 we request clarification as to whether we may include our name on "Home Books", "Lot Book Reports" or similar compilations of real estate information that we sell to providers. We question whether including our name constitutes impermissible advertising under proposed WAC 284-29-215 (3)."

**Commissioner response:** These rules do not prohibit the title company advertising itself. The rules prohibit the giving of things to producers.

**Public comment:** Some title companies would appreciate being able to continue to distribute demographic information at no charge.

**Commissioner response:** Providing demographic information without charge is and has been an illegal inducement. Recent investigations conducted by the Commissioner found abuses in the providing of such information. The Washington Land Title Association ( WLTA ) has also taken the position that providing some of this type of information constituted an illegal inducement.

**Public comment:** A suggestion was made by a small county title company that it should continue to be able to make recorded documents available on its website, since the county in which the title company was located does not provide recorded documents on its website. Otherwise the public has to physically go to the county offices to obtain a copy of a recorded document.

**Commissioner response:** Commissioner agrees and WAC 284-29-210(7) was added to the proposed rule to permit this.

#### COMMENTS ON WAC 284-29-215 ADVERTISING

**Public comment:** Well thought out and should prevent abuses.

**Commissioner response:** The Commissioner agrees.

**Public comment:** Consider elimination of 1a and 1d, so can contribute to state trade association annual educational conference. Would (1)(d) prohibit a title company from sponsoring Edcon?

**Commissioner response:** The Commissioner amended WAC 284-29-220(5)(a)(iii) and WAC 284-29-235(3) to allow title companies to sponsor trade association educational events, but with limits.

**Public comment:** (1) Trade associations – some publish less than quarterly, electronically, etc.

(1)(a)(d) - Associations may not publish as often as quarterly and may only do so in conjunction with one of their events, consider removing. (1)(d) - many trade associations do publications in conjunction with their events, this is more restrictive than needs to be.

**Commissioner response:** The Commissioner recognizes that the method of publication of advertising by and with trade associations has changed from the Idaho rule upon which this section was patterned, and therefore the Commissioner amended WAC 284-29-215(1)(a).

**Public comment:** (1)(c) many realtors have search engines on their websites -- clarify what a search engine is.

**Commissioner response:** The Commissioner agrees that clarification of what constitutes a search engine would be beneficial and added WAC 284-29-215(4) to clarify this concern.

**Public comment:** (1)(e) believes creates an arbitrary limit.

**Commissioner response:** The Commissioner believes that limits must be set within reasonable limits.

**Public comment:** Would (1)(d) prohibit a title company from paying to have a booth at events of trade show events?

**Commissioner response:** The proposed rules allow such behavior subject to the limits set forth in the proposed rules.

**Public comment:** Eliminate 1(a) and 1(d), These subsections of the rule are unreasonable restrictions on realtors ability to make advertising opportunities available to title companies.

**Commissioner response:** These proposed rules address the prohibition of title companies providing things of value to producers in order to obtain title insurance business. The rules are not for the benefit of producers to obtain additional income.

**Public comment:** Under subsections (2) and (3) title companies should have the authority to advertise without restrictions as long as they are paying market rate for such advertisement. Under the current subsections title companies and real estate licensees could never be seen on the same advertisement. This result is outside the spirit of SSB 6847 (Chapter 110, Laws of 2008) which was never intended to have such a dramatic impact.

**Commissioner response:** The Commissioner disagrees. These so-called "co-advertisements" were found by the Commissioner in his investigations to be the subject of abuses and there were disputes over what constituted proportionate payment by the title company for its portion of the ad space. Therefore, this is one of the abuses that was the basis for enacting SSB 6847 (Chapter 110, Laws of 2008) and therefore was intended to impact this practice.

**Public comment:** Clarify that this does not restrict advertising in general, such as in newspapers, radio, etc. Rules could be read broad enough that any person such as newspapers, etc. influence the placement of title business, therefore rule should provide that title companies may advertise in publications of: telephone directories, newspapers, internet search engines, and MLS 4 Owners.

**Commissioner response:** The Commissioner disagrees with this interpretation, but added WAC 284-29-215(4) to clarify this concern.

**Public comment:** What about internet general directories Such as MSN, AOL -- can these sites be deemed not a search engine?

**Commissioner response:** The Commissioner disagrees with this interpretation, but added WAC 284-29-215(4) to clarify this concern.

**Public comment:** Permit advertising on internet but not with a producer.

**Commissioner response:** The Commissioner agrees.

**Public comment:** As I understand it, one of the problems with our last submission is that it would require a change in the definition of a Producer, as already defined in an RCW. We have tried again, leaving the definition of a producer alone while instead looking at proposed WAC 284-29-2 15. Attached is a PDF with page 4, as amended. Our insertion of subsection 3 is highlighted in red. It reads: (3) Notwithstanding other provisions of WAC 284-29, title companies may advertise in the publications of the following entities: telephone directories; newspapers; Internet search engines; and real estate licensees who do not represent clients or who do not function as agents as defined in RCW 18.86.010(2). (4) Except as provided in subsection (3), no advertisement may be placed in a publication that is published or distributed by or on behalf of a producer of title business, including but not limited to, web sites, flyers, postcards, for sale signs, flyer

boxes, or any other means of communication or any other media.

**Commissioner response:** The Commissioner added WAC 284-29-215(4) to clarify this concern.

**Public comment:** Allow to co-advertise.

**Commissioner response:** The Commissioner disagrees. The "co-advertising" practice was one of the largest abuses the Commissioner found in his investigations.

**Public comment:** If intend to prohibit flyers boxes, the rule should be explicit.

**Commissioner response:** The Commissioner agrees and flyer boxes are prohibited under WAC 284-29-260(7)(l).

#### COMMENTS ON WAC 28-29-220 TRADE ASSOCIATIONS

**Public comment:** Gives advantage to larger title companies.

**Commissioner response:** The Commissioner realizes that larger companies may have greater resources to give things up to the limits proposed. However, the rules apply to all title companies the same regardless of the size of the company.

**Public comment:** In my view the proposed rules needlessly restrict and over-regulate the advertising, marketing, and promotional and sponsorship opportunities that title companies may peruse with real estate trade associations.

**Commissioner response:** These proposed rules implement the prohibition of title companies providing things of value to producers in order to obtain title insurance business. The rules are not to benefit of trade associations to obtain a significant portion of the funding of their organizations from title companies. That funding should be provided by the regular members of the trade association or from other sources not subject to undue influence because of the trade association members' ability to refer business.

**Public comment:** Trade associations benefit from contributions from title companies as a group, and no individual producer benefits. Trade associations should be treated differently from other associations. Local Realtor associations are concerned that rules will not allow title companies to donate gifts to trade association functions, and that in leveling the playing field will hurt smaller associations. "Trade associations" should be dropped from the rule's restrictions unless the contribution benefits a specific producer; generally trade associations are not producers of title insurance business. Allow title companies to contribute unlimited amounts to sponsor trade association functions.

**Commissioner response:** The Commissioner disagrees that trade associations do not have an influence on the referral of title insurance business. An inducement can be anything that might motivate and therefore induce a referral of business; without its members, a trade association is a shell. In communicating or offering anything to a trade association, the thing is being offered to each member by association. Trade associations are treated differently in the rule. Rather than an outright prohibition on giving anything to trade associations, title companies are permitted to give things of value to trade associations, but with limits. Title companies should not be the primary funding source for trade associations. That funding should be coming from the regular trade association members who vastly outnumber the number of title companies.

**Public comment:** Title companies should be encouraged to contribute to trade associations and the Commissioner should not treat trade association same as associations.

**Commissioner response:** The Commissioner disagrees. Trade Associations do have an influence on the referral of title insurance business. These rules are about limiting the amounts that title companies spend in order to obtain title insurance business using methods outside open marketplace competition

**Public comment:** Concur that trade associations do not steer title business and limits seem overly stringent, however some limits on contributions to trade association events is beneficial so that the association do not rely on title companies to disproportionately fund their events.

**Commissioner response:** The Commissioner disagrees that steering does not occur based on trade association membership knowledge of who contributes and who does not, and agrees that trade associations should not rely on title companies to disproportionately fund their events.

**Public comment:** Employee time should not be included in calculation of financial limits. (1) trade associations use others as volunteers, not just officers and directors. Title company employees should be allowed to serve on boards and committees of trade associations. Eliminate (1) because most of trade association membership activities are not limited to members in a position to steer business.

**Commissioner response:** The Commissioner agrees that title company personnel may assist trade associations on a limited basis, since there are many more regular trade association members that can provide these services rather than title company employees. An amendment was made to WAC 284-29-220(1) to address this comment.

**Public comment:** Washington Association of Realtors holds an annual education event called Edcon and asks that title companies be permitted to sponsor. Vital that we support associations, title companies need to support education efforts.

**Commissioner response:** Commissioner sees a benefit to consumers and the title companies independent of steering

business if realtors are competent and well-educated about legal real estate transaction practices. Assuming that these educational events flow to the benefit of consumers, the trade associations and their members (which significantly outnumber the number of title companies) should be more than willing to pay for these educational events. However, the benefit inures more significantly to the realtor community, as trained realtors are less likely to make liability-inducing mistakes, particularly since consumers have a right to expect their realtor to know the law and conduct their practice accordingly. The title companies do not "need" to support education efforts that are not to their primary benefit.

**Public comment:** Sometimes do things at trade association sponsored events to benefit a specific producer.

**Commissioner response:** The Commissioner agrees and WAC 284-29-220(2)(b) already addresses this comment.

**Public comment:** Small dollar amount could be established to donate to association.

**Commissioner response:** The Commissioner agrees that there should be a limit on donations to trade associations.

**Public comment:** (2)(e) amount too limiting. Eliminate (2)(e) \$2000 annual limit on cumulative trade association is arbitrary and unreasonable.

**Commissioner response:** The Commissioner disagrees that trade associations do not have an influence on the referral of title insurance business. Trade associations are treated differently, i.e. rather than an outright prohibition on giving anything to trade associations, title companies are permitted to give things of value to trade associations, but with limits. Title companies should not be the primary funding source for trade associations. That funding should be coming from the regular trade association members who vastly outnumber the number of title companies.

**Public comment:** Change the limit on contributing to trade associations to event driven model and not companywide cumulative limit with only limit on dollar amount per event, but no limit on number of events. \$2,000 annual limit to trade associations should be applied on a branch basis. (2)(e) what about title companies that do business in multiple counties? Is too restrictive for them? The \$2000 per company per 12 month period limits those title companies that have offices in more than one county, need reasonable balance in that area. Consider using dollar limit per event. County boundaries would be easier to track by a title company. Suggest use a per title plant per county limit. Suggest putting a limit on the number of events can contribute to per year with a total dollar limit per year.

**Commissioner response:** The Commissioner made changes to WAC 284-29-220 to address this comment.

**Public comment:** Consider using inflation to index limits on contribution amounts, similar to Oregon.

**Commissioner response:** The Commissioner determined that it would be too unwieldy to establish a system to regularly compute the inflation amounts and communicate the standard.

**Public comment:** Eliminate (3)(c), which addresses the ability of a title company's employee to bring a guest to a trade association event. The provision should be no more restrictive than 284-29-230.

**Commissioner response:** The Commissioner disagrees. A title company employee should only be permitted to pay for a family member to attend trade association events. It should not be used as a method for a title company to potentially pay for the entirety of an event by sponsoring all of the trade association attendees as guests.

**Public comment:** Re (3)(c) – in allowing guest, consider using language such as immediate family member rather than blood or marriage.

**Commissioner response:** The Commissioner agrees and amended WAC 284-29-220(3)(c) to address this comment.

#### COMMENTS ON WAC 284-29-225 SELF-PROMOTIONAL ITEMS

**Public comment:** Vague and needs to be more specific as to what specifically can be given. Wording is unclear, for example, can only give total of \$5 in a year.

**Commissioner response:** The Commissioner disagrees that this section is unclear when one reads the entirety of the section.

**Public comment:** Clarify that self promotional item is not a food or beverage item.

**Commissioner response:** The Commissioner made changes to WAC 284-29-225 to address this comment.

**Public comment:** Gives advantage to larger title companies.

**Commissioner response:** The Commissioner realizes that larger companies may have greater resources to give things up to the limits proposed. However, the rules apply to all title companies regardless of the size of the company.

**Public comment:** Having to track these things is a nightmare. Tracking the \$5 would be burdensome, suggest amending to allow giving of unlimited number of items as long as cost of each item is under limit. 12 month limit creates too much of a problem to track. Take out per twelve month period?

**Commissioner response:** The Commissioner amended WAC 284-29-225 to delete the 12 month limit to eliminate the record keeping burden on title companies.

**Public comment:** Net cost definition may be a problem when add other costs of title company other than just cost for purchase of item. Definition of "net cost" to title company includes overhead, etc. is this properly included in cost of self-promotional items? "Net cost" may to be extensive when includes overhead.

**Commissioner response:** The Commissioner amended WAC 284-29-225 to remove "net" from this definition of cost in this section.

**Public comment:** The \$5 per any 12 month period is too restrictive especially when you have to include the title company's net cost of the item, and would make a title company responsible for action by a producer after receipt of the thing of value which is outside of the control of the title company. How can a producer control distribution to others? Consider taking out per individual also.

**Commissioner response:** The Commissioner amended WAC 284-29-225 to address this concern.

**Public comment:** \$5 may be too high could consider being limit of only \$2.50.

**Commissioner response:** The Commissioner agrees that there needs to be a small limit on these items, but title companies do need some ability to advertise themselves.

**Public comment:** Substitute "published" for "printed in (1), (2), &(3).

**Commissioner response:** The Commissioner amended WAC 284-29-225 to delete subsections (1), (2), & (3).

#### **COMMENTS ON WAC 284-29-230 PERMITTED BUSINESS ENTERTAINMENT**

**Public comment:** Glad to see limit raised from \$25 to \$100 as it recognizes inflation.

**Commissioner response:** The Commissioner agrees. The prior \$25 limit was established twenty years ago.

**Public comment:** Provide for automatic cost inflation.

**Commissioner response:** The Commissioner considered such a suggestion but determined that it would be too unwieldy to establish a system to compute what the inflation amounts would be.

**Public comment:** Change definition of person so that it does not include trade association.

**Commissioner response:** The Commissioner disagrees that trade associations do not have an influence on the referral of title insurance business. Trade associations are treated differently, i.e. rather than an outright prohibition on giving anything to trade associations, title companies are permitted to give things of value to trade associations, but with limits.

**Public comment:** If the intent is to prohibit title company employee, etc. from taking food, e.g. doughnuts, snack items, etc. into a producer's office then the rule should be more explicit.

**Commissioner response:** The statute upon which these rules are based and as reiterated in the scope and purpose section of these rules make clear that unless a matter is permitted by these rules, it is prohibited. Therefore, since allowing a title company employee to take food items into a producer's office is no where permitted in these rules, it is clearly and explicitly prohibited.

**Public comment:** It is difficult to predict what the actual attendance at such an event would be. Hence, the limit should be based on reasonable estimates of future participation in the event, not on actual attendance.

**Commissioner response:** The Commissioner amended WAC 284-29-230(5)(b) to address this comment.

**Public comment:** The scope of the limitation is based in part on an office of a producer. This could make a real estate brokerage company responsible for monitoring how many agents in their office dine with a particular title company at one time and producers can't control their independent contractors.

**Commissioner response:** The Commissioner amended WAC 284-29-230(1)(c) to address this comment.

**Public comment:** Self promotional function limits should be based on a branch license basis to recognize title companies that have offices in more than one county.

**Commissioner response:** The Commissioner amended WAC 284-29-230 to address this comment.

**Public comment:** The \$100 meal limit under subsection (1) is separate from a title company event allowed under subsection (4).

**Commissioner response:** The Commissioner added WAC 284-29-230(6) to address this comment.

**Public comment:** Under (3)(c) it should be clarified as to whether the title company representative(s) should be included in the number of "attendees" for prorating purposes.

**Commissioner response:** The Commissioner amended WAC 284-29-230(3)(c) to address this comment.

**Public comment:** A clarification was requested as to whether under (4)(a) a rented hall would be considered a title company's

"occupied space".

**Commissioner response:** Commissioner believes this is already clear, but amended WAC 284-230(4)(a) [WAC 284-29-230(5)(a) in the final rule] to make it abundantly clear that a rental hall is not permitted.

#### COMMENTS ON WAC 284-29-235 EDUCATIONAL SEMINARS

**Public comment:** Delighted to see escrow included.

**Commissioner response:** The Commissioner agrees that title companies should be permitted to provide educational seminars on a topic that now constitutes a significant business activity of title companies.

**Public comment:** Person is not an association. (1)(a) may want to consider changing "person" to individual. Eliminate (3) title companies should be able to provide unlimited support for trade association seminars. Title companies should be able to provide at no charge title, escrow, and RE law classes, ultimately benefits consumer so should be no limit as to cost or extent of curriculum.

**Commissioner response:** The Commissioner disagrees that trade associations do not have an influence on the referral of title insurance business. Trade associations are treated differently, i.e. rather than an outright prohibition on giving anything to trade associations, title companies are permitted to give things of value to trade associations, but with limits. Title companies should not be the primary funding source for trade associations. That funding should be coming from the regular trade association members who vastly outnumber the number of title companies. Assuming that these educational events flow to the benefit of consumers, the trade associations and their members (which significantly outnumber the number of title companies) should be more than willing to pay for these educational events.

**Public comment:** This would prohibit title companies from providing educational seminars on easements, liens, restrictive covenants and similar topics at no charge. Allowing this would make real estate licensees better educated. (1) should consider including the above as allowed topics on "real property law."

**Commissioner response:** The Commissioner disagrees, providing seminars at no charge for topics on real estate law as compared to title to real property goes far beyond the core business of title companies. The Commissioner amended WAC 284-29-235(3) [WAC 284-29-235(4) in the final rule] to allow title companies to sponsor educational seminars on real property law, but only if the title company charges for the seminar.

**Public comment:** Can title company go beyond the listed topics if there is a charge? For title & escrow is no charge except for food, etc.? Does dollar limit include costs of title company for advertising event and facilitation, etc.?

**Commissioner response:** The Commissioner amended WAC 284-29-235 to allow a title company to sponsor an educational seminar of a trade association on other topics, subject to the limits of contributions to trade associations.

#### COMMENTS ON WAC 284-29-240 POLITICAL ACTION COMMITTEES

**Public comment:** Understand creates constitutional issue even though gives advantage to larger companies. Thanks for clarification.

**Commissioner response:** The Commissioner agrees.

#### COMMENTS ON WAC 284-29-245 LOCALE OF TITLE COMPANY EMPLOYEES

**Public comment:** Clear and should be adopted.

**Commissioner response:** Commissioner agrees.

**Public comment:** Much better than the RESPA rule because of its clear guidelines, makes clear separation of operations between the title company and that of the producer.

**Commissioner response:** Commissioner agrees.

**Public comment:** Question if addressing where title company employees are located is beyond scope of the statute – suggest removal. One member says outside of Commissioner's rule making authority.

**Commissioner response:** The Commissioner disagrees. The leasing of office space (desk rentals) by title companies from producers was an abuse that the Commissioner found in his investigations. In addition, the Federal RESPA regulations recognize this and several of the subsections in this section are taken from the RESPA regulations.

**Public comment:** Subsections (1), (3) and (4) are reasonable and consistent with RESPA, but the other goes beyond RESPA. The other sections are not the same as RESPA and should be removed so that Affiliated Business Arrangements can do whatever they want otherwise.

**Commissioner response:** The Commissioner agrees that the other subsections go beyond RESPA but disagrees that the other subsections should be removed. The RESPA guidelines have not stopped illegal practices, as the Commissioner found in his investigations, and establishing stronger prohibitions than RESPA is a reasonable position.

**Public comment:** What about joint lobbies that use a common receptionist?

**Commissioner response:** The Commissioner amended WAC 284-29-245(6) [WAC 284-29-245(4) in the final rule] to allow the sharing of employees provided that the amount paid by the title company is appropriately allocated.

**Public comment:** (7) some arrangements share equipment such as copiers and keep count of use; this type of sharing allows reduction of costs.

**Commissioner response:** The Commissioner amended WAC 284-29-245(6) [WAC 284-29-245(5) in the final rule] to allow the sharing of equipment provided that the amount paid by the title company is appropriately allocated.

**Public comment:** Some other states require that a title company have its own signage for its office.

**Commissioner response:** The Commissioner agrees that some other states have such a requirement.

#### **COMMENTS ON WAC 284-29-250 MEMORIAL GIFTS AND CHARITABLE CONTRIBUTIONS**

**Public comment:** Consider changing \$50 limit to \$200, \$50 by today's standards is low and this situation happens very infrequently.

**Commissioner response:** The Commissioner amended WAC 284-29-250(1) from \$50 to \$200.

**Public comment:** Members of trade associations have events that benefit a charity, should allow title company to support a trade association and title companies should be able to participate at an unconditional level, as long as does not benefit one particular producer. (2) Charitable organizations would be affected as there are some that particular trade association partner with and raise money for the charity. Some producers have affiliated charitable organizations and title company employees should not be prohibited from contributing to these charities. TPCAR has charitable golf and other events that raise money for charities and give to the charities after costs are paid and there would not be any contribution to the charity if the title companies did not participate. Eliminate (2)(c). Real estate brokerages have formed foundation or other charitable entities and title companies should be able to contribute unlimited to these entities.

**Commissioner response:** The Commissioner recognizes the benefit of contributing to charities by title companies. Therefore, the Commissioner made amendments to this section to allow broader contributions to charities by title companies provided the contribution is not made in exchange for the referral of title insurance business.

#### **COMMENTS ON WAC 284-29-255 OTHER THINGS OF VALUE THAT TITLE COMPANIES ARE PERMITTED TO GIVE TO PRODUCERS**

**Public comment:** Good rule.

**Commissioner response:** The Commissioner agrees.

**Public comment:** This section is again overbroad and we need to keep in mind that these should not prohibit any payment by a producer to a title company or delivery of a thing of value from the title company to a producer as long as a reasonable market value is paid.

**Commissioner response:** The Commissioner disagrees. The Commissioner's investigations found that the providing of things of value by title companies is generally beyond the core business of title insurance companies and is only being done to provide a subsidy to producers in order to obtain their title insurance business.

**Public comment:** Consider removal of lines of credit in AfBAs, as may be a normal business transaction.

**Commissioner response:** The Commissioner added WAC 284-29-200(5) to address this concern.

**Public comment:** Trust accounting – clarification that the rule does not prohibit title companies putting earnest money deposits in escrow trust account when an escrow is officially opened. Does this include trust accounting for escrow when depositing earnest money? (1) clarify some of the functions – for example realtors using title company for escrow have earnest money deposited with the closer: does this constitute providing trust accounting functions?

**Commissioner response:** Although the Commissioner does not believe the proposed rule prohibits this type of trust accounting, he amended WAC 284-29-255(1) for further clarification.

**Public comment:** Clarify difference between providing education or consulting for short sale consultants.

**Commissioner response:** The Commissioner disagrees with this comment. Actually providing these services and conducting educational seminars are two separate functions and are clearly different from each other without need for further clarification. In any event the title company must charge for either.

**Public comment:** Some title companies have websites that allow a producer to access the site and create advertising flyers and other marketing material advertising the producer, with the understanding that this would be permitted as long as the title company charges a fee, but that it would be very difficult for a title company to determine price.

**Commissioner response:** The Commissioner disagrees that it would be difficult to determine the price. Computer software programs that can be used to create these materials are sold on the open market and it would be easy for a title

company to determine what such a program is sold for, particularly since the title company paid for such a program in the first instance.

**Public comment:** (2) Trade associations use of title company space for free and vice versa, should be allowed to continue. (2) Trade associations should be exempted from paying for use of title company space. (2) Delete the words "or trade association" as trade associations should not be considered producers in this regard.

**Commissioner response:** The Commissioner disagrees, as trade associations do have an influence on where title insurance is placed. There are many more regular members of realtor trade associations than there are title companies. Therefore, the Commissioner amended WAC 284-29-255(2), and added WAC 284-29-255(3) to allow title companies to occasionally host trade associations meetings, but the regular members should be allowing the trade associations to meet at their premises more often than at title company premises.

#### COMMENTS ON WAC 284-29-260 EXAMPLES OF PROHIBITED MATTERS

**Public comment:** List is easy to follow.

**Commissioner response:** The Commissioner agrees.

**Public comment:** Remove the prohibition on trade association using title company premises at no charge.

**Commissioner response:** The Commissioner disagrees as trade associations do have an influence on where title insurance is placed, and there is clear financial benefit to free meeting space that could influence the referral of business. There are many more regular members of the realtors trade associations than there are title companies. Therefore, the Commissioner amended WAC 284-29-255(2) and added WAC 284-29-255(3) to allow title companies to occasionally host trade associations meetings, but the regular members should be allowing the trade associations to meet at their premises more often than at title company premises.

**Public comment:** The rule prohibits advancing of 1% excise tax to close.

**Commissioner response:** The Commissioner agrees.

**Public comment:** Eliminate subsections (1)(a) and (b) as they are comprehensive and the commenter is not sure how it applies to the previous sections covering trade associations which have exclusions listed.

**Commissioner response:** The Commissioner disagrees. It is clear if the commenter read subsection (1)(a) which indicates that the matters set forth in the remainder of this section are subject to the previous section, including section WAC 284-29-220 (Trade Associations).

**Public comment:** Does subsection (3) prohibit title company employees from attending broker opens, going to an office of a producer, or attending normal and customary office meetings of providers.

**Commissioner response:** The Commissioner disagrees that this is unclear. The rule provides that a title company employee is not prohibited from attending these functions, provided the title company employee does not pay to attend the event or unless the fee paid by the title company employee is no greater than the fee charged to producer attendees.

**Public comment:** Subsection (5) as to how and when a title company disburses escrow funds is beyond the scope of this rulemaking.

**Commissioner response:** The Commissioner disagrees. RCW 48.29.005 gives the Commissioner rule making authority to implement and administer Chapter 48.29 RCW and in particular to adopt rules regarding matters that provide things of value to persons in a position to refer title insurance business. In addition to RCW 48.29.190, prohibiting the disbursement of funds from an escrow prior to the title company having good funds, the disbursement of funds from an escrow prior to the conditions of the escrow being met provides something of value to the recipient. An example: one title company reported that a realtor asked the title company to disperse the commission check to the realtor before the transaction closed, and when the title company refused to do so, that realtor no longer referred business to the title company.

**Public comment:** A title company should be able to advance funds to close if additional costs were the result of a title company's mistake or to settle a legitimate dispute involving business dealings.

**Commissioner response:** The Commissioner agrees that a title company should be able to advance funds to close a transaction, but only if the additional costs were a result of the title company's mistake for which it may be liable, not if the mistake was made by others and the title company has no liability for the mistake. Therefore the Commissioner amended WAC 284-29-260(6) [WAC 284-29-260(5) in the final rule] to address this concern.

**Public comment:** Regarding subsection (7): Under 7 (m) we request confirmation that it is the intent of the Commissioner to forbid the sale of postcards, flyers etc, referencing the definition of "give" in proposed WAC 284-29-205 (5) and (7). In subsection 7 unclear whether these items can be given to a producer if they pay the fair value of the item. (7) Is it the intent to prohibit title companies from selling flyer boxes to producers? Under 7 (l) we question whether it is the intent of the Commissioner to allow us to sell flyer boxes and for sale signs. Further, if such is the intent, we question whether it would be permissible to include our name on any flyer boxes or for sale signs that we sell, or whether the inclusion of our name would be

impermissible advertising under proposed WAC 284-29-215 (3). Under 7 (l) we question the inclusion of the clause "The cost of". Section 260 as a whole seems to evidence the Commissioner's intent to prohibit the sale or gift of various items, but the inclusion of the referenced clause seems to evidence the Commissioner's intent to prohibit only the gifting of "flyer boxes and stands, for sale signs", etc. Further, should the sale of such items is deemed permissible, we question whether it would be permissible to include our name on any flyer boxes or for sale signs that we sell, or whether the inclusion of our name would be impermissible advertising under proposed WAC 284-29-215 (3).

**Commissioner response:** It is quite clear if one reads the entirety of the rules [the definition of "give" in WAC 284-29-205(5) and the introductory paragraph of WAC 284-29-260] that those matters listed in WAC 284-29-260 must not be given to a producer **whether or not** the producer pays fair value for the item.

**Public comment:** (7) We question the intent of 7(a), as it seems to conflict with section 255. For instance 7(a) would appear to prevent a title company from providing the services of a title company employee as, for instance, a short sale consultant, even if the title company collects a fee for the service, while section 255 states that such a service is permissible provided reasonable charges are collected for the service.

**Commissioner response:** The Commissioner disagrees with this comment. These sections refer to different types of behavior. The chapter of regulations is organized as a series of subchapters with sections under each subchapter.

**Public comment:** (11) Suggest language for cancellation fees from actually getting paid to invoicing the person who ordered the commitment and that fee is due up to 180 days unless policy is purchased. (11) Title commitments – does this require prepayment? How else collect? (11) Title reports – suggested language that title companies invoice and if not paid after 180 days would be violation by realtor, but not by title company. (11) Cancellation fee this should eliminate selling of "pre-escrows." (11) Based on how the industry functions, it is impractical to require the title companies to collect cancellation fees at the time an order is taken. Making the ordering agent financially responsible for the cancellation fee and requiring some form of collection may be reasonable.

**Commissioner response:** The Commissioner disagrees. Providing free commitments has been used by the title industry as method to induce business to be sent to a particular title company. The title industry has complained to the Commissioner for many years that they believe the providing of free commitments is improper and is a significant cost for title companies. The Commissioner did not intend that the proposed rule require COD for the delivery of commitments and amended WAC 284-29-260(11).

**Public comment:** (12) Board of Directors fees – suggest strike as this is outside of scope of the statute and hard to define what is reasonable in the area. (12) Vague, many different ways to compute board of director's fees. (12) Regulating the title company's board of directors may be reasonable but this proposed rule is overbroad and nearly impossible to enforce. A better alternative would to make any producer subject to the same compensation as other title company directors. (12) Board of directors fees, how regulate what is an appropriate business in locale? (12) How about something to affect that board of director fees paid to producer members must be same as amount paid to non-producer members?

**Commissioner response:** The Commissioner believes that it is appropriate to prohibit title companies from using board of director fees as a method to influence the placement of title insurance business, but as a result of these comments about its enforceability, he amended WAC 284-29-260(12) [WAC 284-29-260(11) in the final rule] to make it easier to understand and enforce along the lines of the comment that the board of director fees of producer board members must be the same as non-producer members.

**Public comment:** (13) Does this prohibit advertising with producers?

**Commissioner response:** Yes.

**Public comment:** 13a – suggest striking affiliated of title insurance, may be confusing to AfBAs. (13) Fine as long as we don't interfere with legitimate AfBAs.

**Commissioner response:** The Commissioner disagrees with these comments. These rules apply to all title companies alike, whether or not they are a member of an AfBA.

**Public comment:** (16) Should be allowed to negotiate escrow fees with builders. (16) Regulating whether a title company can offer products or serves below cost is overbroad and likely harmful to consumers. (16) Define cost – why can't do for less then cost? 'Discriminate' among customers to get business. (16) Title company should be able to negotiate the escrow fee to the buyer and seller.

**Commissioner response:** The Commissioner disagrees with these comments. Escrow fee discounts are used by title companies to obtain business. In addition one of the primary functions of the Commissioner is to regulate the solvency of title companies. If title companies provide their services at a loss, it may be questionable as to whether or not a title company will have sufficient funds to pay claims in the future.

#### COMMENTS ON WAC 284-29-265 RECORDKEEPING

**Public comment:** Consider using calendar year on limits in rules as compared to twelve month period as easier to keep

record of.

**Commissioner response:** The Commissioner generally agrees that placing limits on a calendar year basis rather than a twelve month basis will make it much easier for title companies to keep records of the matters contained in these rules and amended the twelve month period throughout the rules to a calendar year.

**Public comment:** Self-promotional items - track total amount of items instead of individual items.

**Commissioner response:** The Commissioner agrees that it will be easier for title companies to track the self-promotional items on a cost of item basis rather than the number of items given to particular individuals and amended WAC 284-29-225 to address this concern.

Comments received after OIG distributed second draft of rules on November 7, 2008

#### GENERAL COMMENTS ON AFFILIATED BUSINESS ARRANGEMENTS (AfBAs)

**Public comment:** At the heart of my comments is the right of a title company and a producer to engage in a lawful Affiliated Business Arrangement. As you know, the real estate brokerage community worked very hard to ensure that the right to engage in AfBAs was not infringed by this legislation. AfBAs are different and far more complex than the typical customer relationship that a title company has with an individual producer and the rules need to take into account that difference.

**Commissioner response:** The Commissioner disagrees with this comment. Although the real estate brokerage community worked hard to ensure that the right to engage in AfBAs was not infringed by this legislation, the real estate community was not successful in this endeavor. The legislature, by the legislation these rules implement, did place restrictions on AfBAs. These rules do not prohibit actions by title companies and AfBAs that are permitted by the legislation, but make the rules applicable to all title companies, including AfBAs, ensuring AfBAs are not given an unfair advantage.

#### COMMENTS ON WAC 284-29-200 SCOPE AND PURPOSE

**Public comment:** In WAC 284-29-200(2) in the third line move "the" to after influence.

**Commissioner response:** The Commissioner amended WAC 284-29-200(2) to delete "the" in the third line.

#### COMMENTS ON WAC 284-29-210 REAL PROPERTY INFORMATION

**Public comment:** In subsection (1) in the 7<sup>th</sup> line delete "only".

**Commissioner response:** The Commissioner amended WAC 284-29-210(1) and deleted "only" in the 7<sup>th</sup> line.

**Public comment:** Consider under subsection (6) to add "assigns or designees" so that a producer could get a free copy of the commitment at direction of the insured or proposed insured.

**Commissioner response:** The Commissioner disagrees. The providing of free commitments are addressed elsewhere in these rules and this subsection concerns providing documents referred to in a commitment, not the commitment itself. In addition by the addition of "assigns or designees" had the possibility to lead to the abuses that these rules are being adopted to prevent.

#### COMMENTS ON WAC 284-29-215 ADVERTISING

**Public comment:** Subsection (1)(e) creates an arbitrary limit.

**Commissioner response:** The Commissioner disagrees the amount arrived at is a compromise from larger or unlimited amounts suggested by the Realtor Trade Associations and the smaller limits suggested by the WLTA and consumer groups.

**Public comment:** What about internet general directories? MSN, AOL, what if advertise on these sites not search engine. Suggestion can advertise on internet but not with a producer (4)(c) many realtors have search engines on their websites - clarify what a search engine is.

**Commissioner response:** The Commissioner amended WAC 284-29-215(4)(c) to address this comment.

**Public comment:** Title companies that are part of an affiliated business arrangement should be exempted from the prohibitions in this section.

**Commissioner response:** The Commissioner disagrees as the rules should apply to all title companies alike and should not provide an unfair advantage to particular title companies.

**Public comment:** "Do the provisions of WAC 284-29-215 prohibit the inclusion of a Title Company name on a product created by a Title Company for a producer? For instance, may a Title Company put its name on a HomeBook created by the Title Company for a Realtor?"

**Commissioner response:** These rules do not prohibit the title company advertising itself. What is prohibited is the

creating of things for producers.

#### COMMENTS ON WAC 28-29-220 TRADE ASSOCIATIONS

**Public comment:** Trade association are not persons who influence the placement of title business and that there should be no limit on educational seminars of trade associations.

**Commissioner response:** The Commissioner disagrees that trade associations do not have an influence on the referral of title insurance business. The rules treat trade associations differently, i.e. rather than an outright prohibition on giving anything to trade associations, with limits, title companies are permitted to give things of value to trade associations. Title companies should not be the primary funding source for trade associations. That funding should be coming from the regular trade association members who vastly outnumber the number of title companies. Assuming that these educational events flow to the benefit of consumers, the trade associations and their members (which significantly outnumber the number of title companies) should be more than willing to pay for these educational events. Otherwise it would appear to the Commissioner that these educational events are only for the benefit of consumers if the title companies pay for it.

**Public comment:** In subsection (5)(b)(ii) to change "all" to "any".

**Commissioner response:** The Commissioner disagrees as this would change the limits intended by this section

**Public comment:** Contributions to trade association should be similar to the rules in Idaho, i.e. educational seminars of trade associations can be sponsored without limitations.

**Commissioner response:** Commissioner disagrees. A review of the Idaho rules and contact with the Department of Insurance in Idaho found the Idaho rules do not allow unlimited sponsorship of trade association educational seminars.

**Public comment:** Is the rule intended to limit title companies from contributing to their own trade association?

**Commissioner response:** It is not the intent of the Commissioner to prohibit title companies from contributing to their own trade association and therefore amended WAC 284-29-205(13).

#### COMMENTS ON WAC 284-29-225 SELF-PROMOTIONAL ITEMS

**Public comment:** The Commissioner should consider deletion of "food and beverages" and/or adding packaged vs. non-packaged food items.

**Commissioner response:** Commissioner agrees to the deletion that title companies should be allowed to give small food items to providers, so long as the other conditions of this section are met and therefore amended WAC 284-29-225.

**Public comment:** WAC 284-29-225 as revised appears to authorize a Title Company to give to a producer an unlimited number of "things of value" as long as each individual "thing of value" costs the Title Company less than \$5.00. Is that the intent?

**Commissioner response:** The amendment was made to WAC 284-29-225 to allow title companies to provide self-promotional items to be given to producers by title companies as long as the cost to the title company was less than \$5 per item in response to the record keeping concerns that were raised by comments of others in the title industry.

#### COMMENTS ON WAC 284-29-230 PERMITTED BUSINESS ENTERTAINMENT

**Public comment:** Does subsection (1)(c) permit taking more than 4 individuals in one day or what if a title company takes the same individual to two meals in one day? Of if title company has multiple offices does this only allow the title company to only take a total of 4 individuals to a meal in one day even if different counties?

**Commissioner response:** The Commissioner amended WAC 284-29-230(1)(c) to address this comment.

**Public comment:** Does WAC 284-29-230 (5) (b) have a typo: "expend spend"?

**Commissioner response:** Commissioner deleted "expend" in WAC 284-29-230(5)(b).

**Public comment:** Should WAC 284-29-230 (6) should refer to subsections (1) and (5) instead of (1) and (4)?

**Commissioner response:** Commissioner amended WAC 284-29-230(6) to make this change.

#### COMMENTS ON WAC 284-29-235 EDUCATIONAL SEMINARS

**Public comment:** Are seminars on other topics prohibited even if title company charges full cost?

**Commissioner response:** As a result of this and similar comments the proposed rule was amended to allow title companies to sponsor seminars on other topics provided the title companies are actually paid the full cost of the seminar and other conditions.

**Public comment:** WAC 284-29-235 (1) seems to enable a Title Company to provide, for instance, clock hour classes to

Realtors at no charge. Perhaps deleting "title to real property" or a stringent definition of "title to real property" would assist. It also seems appropriate to require that attendance at the educational seminars be non-exclusive and open to any provider.

**Commissioner response:** The Commissioner does not agree that a more stringent definition of "title to real property" is necessary. When the Commissioner amended WAC 284-29-235(4) to allow title companies to conduct seminars on other topics (provided the title company is paid for attendance at the seminar) he provided that in order to conduct such seminars, the seminar must be open to all producers.

#### **COMMENTS ON WAC 284-29-245 LOCALE OF TITLE COMPANY EMPLOYEES**

**Public comment:** A concern was raised that subsection (4) would permit the customers of title company to also include realtors of competitors that would have access to a realtor's office which may have the effect of disclosing trade secrets.

**Commissioner response:** The Commissioner believes that this concern is overstated, but agrees to delete this proposed subsection.

**Public comment:** Subsection (7) should be changed to allow title companies to use space rented in a producer's premises for legitimate uses.

**Commissioner response:** The Commissioner disagrees. This proposal lacks specificity and would not prohibit the abuses that the Commissioner found in his investigations.

**Public comment:** Amend subsection (7) to provide that the leased space only need be used by the title company for legitimate business not less than once per week.

**Commissioner response:** The Commissioner disagrees. This proposal would not prohibit the abuses that the Commissioner found in his investigations. Also, the Commissioner does not find that there is any legitimate business reason that a title company would pay full rental for a space that it may only use once a week.

#### **COMMENTS ON WAC 284-29-250 MEMORIAL GIFTS AND CHARITABLE CONTRIBUTIONS**

**Public comment:** Consider clarifying subsection (1) by adding seriously before injured.

**Commissioner response:** Commissioner agrees and therefore amended WAC 284-29-250(1).

**Public comment:** (3) consider inserting "by or for" a charity.

**Commissioner response:** The Commissioner disagrees.

**Public comment:** Is the rule intended to limit solicitation by a producer for their favorite charity, particularly when the solicitation is made directly or indirectly by the producer in return for the referral of title insurance business?

**Commissioner response:** The Commissioner agrees that a title company should not be making a contribution to a charity when the contribution is made in return for the referral of title insurance business. This is consistent with a recent letter dated August 6, 2008 from the U.S. Department of Housing and Urban Development in response to RESPA questions. Therefore, the Commissioner amended WAC 284-29-250(2).

#### **COMMENTS ON WAC 284-29-255 OTHER THINGS OF VALUE THAT TITLE COMPANIES ARE PERMITTED TO GIVE TO PRODUCERS**

**Public comment:** Change subsection (1) to read as follows: "A title company must not give, offer to give, provide, or offer to provide nontitle services (for example: Computerized bookkeeping, forms management, computer programming, trust accounting for trust accounts not held in the name of the title company, short sale consultants, or transaction coordination) or any similar benefit to a producer, without charging and actually receiving a fee equal to the value of the services provided and in an amount at not less than what the producer would pay if the services were purchased on the open market.

**Commissioner response:** The Commissioner disagrees. This proposal would allow a title company to provide these services at a loss to the title company. One of the primary functions of the Commissioner is to protect the financial solvency of the entities he regulates. By allowing title companies to sell services at a loss to providers would have a negative impact on the financial solvency of a title company and require that the title company charge consumers increased prices for title insurance and escrow services in order to provide these services to providers.

**Public comment:** What does furnished mean in subsection (2) and where it is used elsewhere in the rules?

**Commissioner response:** The Commissioner's amendments to WAC 284-29-255(2) and (3) answer this question

**Public comment:** (3) Trade association should have unlimited use of title company premises.

**Commissioner response:** The Commissioner disagrees as trade associations have an influence on where title insurance is placed. There are many more regular members of the realtors trade associations than there are title companies. Therefore, the Commissioner amended WAC 284-29-255(3) to allow title companies to occasionally host

trade associations meetings, but the regular members should be allowing the trade associations to meet at their premises more often than at title company premises.

#### COMMENTS ON WAC 284-29-260 EXAMPLES OF PROHIBITED MATTERS

**Public comment:** May a title company advance recording fees, either into an escrow to facilitate a closing or otherwise.

**Commissioner response:** The Commissioner agrees that title companies should continue to be allowed to advance recording fees, with certain limitations and therefore added WAC 284-29-255(5).

**Public comment:** Change subsection (5) to allow a title company to advance payment into an escrow if the payment is made in compliance with a court order or in the context of settlement of a bona fide dispute involving the title company.

**Commissioner response:** The Commissioner agrees, provided the payment by the title company regarding a bona fide dispute involving the title company is only one in which the title company may be liable, and therefore he amended WAC 284-29-260(5).

**Public comment:** (6)(g) typo remove "the".

**Commissioner response:** WAC 284-29-260(6)(g) was amended to remove the "the".

**Public comment:** Subsection (10) should be amended to provide a free harbor for those instances in which the title company never gets paid for the commitment.

**Commissioner response:** The Commissioner would consider providing for a free harbor provided the title insurance industry can provide language that resolves this problem and has specificity in its application and enforcement. Merely creating a safe harbor for when a title company sends out a billing does not solve the problem as that is what is currently occurring.

**Public comment:** Title companies that are part of an affiliated business arrangement should be exempted from the prohibition in subsection (12).

**Commissioner response:** The Commissioner disagrees as the rules should apply to all title companies alike and should not provide an unfair advantage to particular title companies.

**Public comment:** (15) At the bottom of page 13 (top of 14) of the amended draft is a prohibition against Title Companies performing escrow services at less than the actual cost (overall & per person). If my competitor was charging an escrow fee of only \$90.00 to a builder/seller would that be o.k. - if the Purchase and Sale agreement allows for the builder to pay a different/lower fee than the buyer but the combined escrow fees do cover the costs to the title company? Or does it mean that the \$90.00 on the builder's side would be violating the rule? It is true that closing multiple properties for a builder in a subdivision becomes easier once you create a template (cut-and-paste the closing statement) and a sophisticated builder/seller might only take a couple minutes to sign; but does that warrant such a deep discount in escrow fees? It would seem that a highly paid escrow officer could eat up \$90.00 pretty fast in wages alone. Now that your office has all/most of the escrow rates from Washington Title Insurers and Agents, are you planning to address these type of rates offered to Builders as well as other special circumstance customers such as Refinance borrowers? While there is not currently much building or refinancing going on, we used to get a lot of pressure to match our competitors' rates for these two items (inside and outside of our County).

**Commissioner response:** The Commissioner disagrees with these comments. Escrow fee discounts are used by title companies to obtain business. In addition one of the primary functions of the Commissioner is to regulate the solvency of title companies. If title companies are permitted to provide their services at a loss, it may be questionable as to whether or not a title company will have sufficient funds to pay claims in the future.

Comments received after OIC filed the CR-102 in WSR 08-24-106 on December 3, 2008:

#### GENERAL COMMENTS ON THE RULE

**Public comment:** Will everybody understand what the rules are? The rules as developed are commendably thorough. The effort to be comprehensive has led to a very complex and detailed set of provisions that are undoubtedly going to lead to confusion and will inevitably make enforcement more not less difficult.

**Commissioner response:** While the Commissioner agrees that the rules are complex and detailed, he disagrees that they will lead to confusion and make enforcement more difficult. Because the rule set forth with specificity what title companies can and cannot do, they will lessen the confusion and be easier to enforce.

**Public comment:** Taking all the examples of the limits allowed in total, a single title company could be providing \$24,600 to the benefit of the employees and good will of a real estate company in a single year, to say nothing of the possibility that they might also rent space in a real estate company office and occupy it only 30 hours a week.

**Commissioner response:** The Commissioner understands the concerns raised by this comment. However, in drafting these rules the Commissioner made compromises to restrict the activities that have led to abuses in the past, yet still

allow the title industry latitude to still be able to market their product.

#### COMMENTS ON WAC 284-29-200 SCOPE AND PURPOSE

**Public comment:** Subsection (5) does not adequately exempt our business relationship. Language similar to that set forth in section 3500.15, affiliated business arrangement of RESPA should be considered and incorporated in 284-29-200 through 265.

**Commissioner response:** The Commissioner disagrees with this comment. Subsection (5) does adequately addresses affiliated business arrangements as set forth in section 3500.15, RCW 48.29.213 to which subsection (5) cites sets forth the particular provisions of section 3500.15 of the RESPA regulations. In addition subsection (5) specifically indicates that nothing in WAC 284-29-200 through WAC 284-29-265 prevents these arrangements or the payments set forth in the cited RCW section.

**Public comment:** As written, the rules do not provide an exception for referrals between an attorney to a title company operated by the law firm. So long as no fee is generated by the referring attorney from the title agency for the referral, such practice should not constitute a violation of -200 through 265 and the rules should specifically say so.

**Commissioner response:** The described practice should not constitute a violation of -200 through 265 and the rules should specifically say so.

#### COMMENTS ON WAC 28-29-220 TRADE ASSOCIATIONS

**Public comment:** There is a concern among the members of the Washington Land Title Association that the limit to trade associations is too high. While we agree with the allowance of political activity in trade associations we do not believe it our role to be a major supporter of their social or business functions. We believe an annual limit of \$1,000 per county, per year with a maximum of \$250 per event is an adequate contribution limit.

**Commissioner response:** The Commissioner understands the concern raised by this comment. However, in drafting these rules, the Commissioner balanced the limits that title companies could contribute to trade associations against the unlimited contributions sought by the Realtor Trade Associations and the limits proposed by the title industry, and arrived at the stated limitation amount. Nothing in the rule requires any title company to actually make such payments.

**Public comment:** WAC 284-29-220 would limit title company participation in trade associations to three times a year in the amount of \$1000. This might be reasonable enough but it is applied on a county by county basis – it is not applied to a company as a whole. If a company has a plant involving six counties, then the participation in trade associations becomes \$18,000 per year. The cumulative amount involved here pushes the border of what is a reasonable promotional expense.

**Commissioner response:** The Commissioner understands the concerns raised by this comment. However, in drafting these rules the Commissioner made compromises to restrict the activities that have led to abuses in the past, yet still allow the title industry latitude to still be able to market their product.

#### COMMENTS ON WAC 284-29-230 PERMITTED BUSINESS ENTERTAINMENT

**Public comment:** Amend the verbiage in section WAC 284-29-230(1)(c) from "in a single day" to "during a single event" so it is more appropriate for the manner in which title business is conducted.

**Commissioner response:** The Commissioner amended WAC 284-29-230(1)(c) to make the suggested change.

**Public comment:** Supposing the \$100 per person per year limit stated in the rule to apply to two representatives of a producer and their spouse's, we are up to \$400 per year for the representatives of a single real estate company. Assuming that a real estate company has 16 representatives, this expenditure can be multiplied by four, providing \$1600 in entertainment to the representatives of a single company.

**Commissioner response:** The Commissioner understands the concerns raised by this comment. However, in drafting these rules the Commissioner made compromises to restrict the activities that have led to abuses in the past, yet still allow the title industry latitude to still be able to market their product.

#### COMMENTS ON WAC 284-29-245 LOCALE OF TITLE COMPANY EMPLOYEES

**Public comment:** WAC 284-29-245 is also of concern. In our situation, personnel of one company is cross-trained to do work for the other. So long as costs and expenses of each business is properly accounted for meets the requirements of Dept. Revenue and IRS there should be no need for any further bookkeeping gymnastics. The business relationship between two entities wherein one is wholly owned by the other, does not fall within the scope or purpose of the rules and does not fall with the prohibition intended to be addressed here. Cannot benefit from bulk purchases of supplies or equipment. How can purchase or rent space so that the two businesses can be segregated."

**Commissioner response:** The Commissioner disagrees with this comment. Presuming that the costs and expenses are reasonably allocated between the entities (as it would appear that they are by complying with Dept. of Revenue and IRS

statutes and regulations) then this section is consistent with this practice. In addition RCW 48.29.210 prohibits the giving of things of value to a person in a position to influence the referral of title insurance business and makes no distinction as to who owns the title company. Therefore, these rules fall within the scope and purpose of the legislation

#### COMMENTS ON WAC 284-29-250 MEMORIAL GIFTS AND CHARITABLE CONTRIBUTIONS

**Public comment:** The WLTA appreciates the ability to contribute to bona fide charities; they believe charities named, owned, managed, or under control of, or beneficial to producers of title insurance business should be restricted.

**Commissioner response:** The Commissioner understands the concern raised by this comment. The Commissioner did amend the rule to add WAC 284-29-250(2)(b) to prohibit the contribution to a charity if the payment is being made in exchange for the referral for title insurance business. Therefore, if a charity that is named, owned, managed, or under the control of, or beneficial to producers of title insurance business and the charity is requiring the title company to contribute to the charity in order to obtain the producers title insurance business or if the producer refuses to send title insurance business to a particular title company because it does not contribute to the charity, then this is an indirect method of making the contribution to the charity in exchange for the referral of title insurance business and prohibited. In addition there is nothing in these rules requiring title insurance companies to actually contribute to such charities.

**Public comment:** While commendable, charitable events can have a value as good will in a community, and consequently, be a form of advertising. For example, if a real estate firm sponsors a charity marathon and the title company contributes \$5000 to help sponsor the event, the good will flows to the real estate firm not the title company.

**Commissioner response:** The Commissioner understands the concern raised by this comment. However, if a title company wishes to contribute to a charity it should be able to do so unless the contribution is made, directly or indirectly, in exchange for the referral of title insurance business. Most charitable contributions to events sponsored by others in the business community carry an advertising benefit to the donor, as the sponsor already receives benefit from their role as sponsor. The donations are not made to further enhance the sponsor. If a title company contributes to a realtor sponsored charitable event, it achieves a dual purpose – as an inducement to refer business, and to generate goodwill toward the title company through association with giving. Such advertising goodwill ultimately is an effort to induce referral of business, which occurs in the industry not through the consumer typically, but through the consumer's realtor.

#### COMMENTS ON WAC 284-29-260 EXAMPLES OF PROHIBITED MATTERS

**Public comment:** There is a concern regarding Section (10). The commenter desires collection steps outlined in a manner that, if followed, will provide them with a safe harbor from the penalties associated with their inability to collect fees.

**Commissioner response:** The Commissioner understands the concerns. However, in the past the title companies have failed to make sufficient, if any, collection efforts when producers fail to pay the cancellation fees. Therefore, there is no indication that a "safe harbor" for collection efforts will correct the problem.

**Public comment:** Transactions involving commercial property often take more than 180 days from the date of the issuance of the title insurance commitment to close and hence, a presumption that a transaction on commercial property has cancelled within 180 days after the issuance of the commitment is not realistic.

**Commissioner response:** The Commissioner amended WAC 284-29-260(10) and added a definition of commercial property in WAC 284-29-205.

#### Comments received at OIC rule-making hearing on January 9, 2009.

#### COMMENTS ON WAC 284-29-205 DEFINITIONS

**Public comment:** The definition in WAC 284-29-205(13) regarding trade associations should be amended as trade associations are comprised of producers and active title company affiliates. Trade associations themselves do not influence the referral of title insurance business, only individual members.

**Commissioner response:** The Commissioner disagrees that trade associations do not have an influence on the referral of title insurance business. The rules recognize that trade associations are made up of member realtors, and rather than an outright prohibition on giving anything to trade associations, title companies are permitted to give things of value to trade associations, but with limits. Title companies should not be the primary funding source for trade associations. That funding should be coming from the regular trade association members who vastly outnumber the number of title companies.

#### COMMENTS ON WAC 28-29-220 TRADE ASSOCIATIONS

**Public comment:** The limits in WAC 284-29-220(6)(b) would limit what local realtor trade associations will be able to receive from title companies. This limit puts a severe limit on the process and would eliminate title company contributions to the state realtor association.

**Commissioner response:** These proposed rules prohibit title companies providing things of value to producers in order

to obtain title insurance business. The rules are not for the benefit of trade associations to obtain funding of their organizations from title companies. That funding should be provided by the regular members of the trade association.

#### **COMMENTS ON WAC 284-29-235 EDUCATIONAL SEMINARS**

**Public comment:** Expand the curriculum that title companies are permitted to offer at no charge under WAC 284-29-235(1), to the same as that permitted in WAC 284-29-235(2)(c), i.e. including real property law rather than title to real property education.

**Commissioner response:** The Commissioner disagrees. Providing seminars at no charge for any topic on real estate law, rather than just title to real property law, goes far beyond the core business that title companies engage in. WAC 284-29-235(4) allows title companies to sponsor educational seminars on real property law, but only if the title company charges for the seminar.

**Public comment:** Amend WAC 284-29-235(1) to allow title companies to conduct, at no charge, educational seminars on topics including real property law and not just title to real property as proposed.

**Commissioner response:** The Commissioner disagrees. Providing seminars at no charge for any topic on real estate law, rather than just title to real property law, goes far beyond the core business that title companies engage in. WAC 284-29-235(4) allows title companies to sponsor educational seminars on real property law, but only if the title company charges for the seminar.

#### **COMMENTS ON WAC 284-29-255 OTHER THINGS OF VALUE THAT TITLE COMPANIES ARE PERMITTED TO GIVE TO PRODUCERS**

**Public comment:** Amend WAC 284-29-255(3) to allow trade associations to have unlimited use of title company premises for meetings of the trade associations.

**Commissioner response:** The Commissioner disagrees as trade associations do have an influence on where title insurance is placed. The Commissioner amended WAC 284-29-255(3) to allow title companies to occasionally host trade associations meetings, but the regular members should be allowing the trade associations to meet at their premises more often than at title company premises.

#### **COMMENTS ON WAC 284-29-260 EXAMPLES OF PROHIBITED MATTERS**

**Public comment:** The cancellation fee provision in WAC 284-29-260(11) as written is not workable and leaves producers and title companies unable to comply. There will always be instances in which payment is not actually received. A safe harbor for the title companies should be created to include such things as requiring billings, collection efforts, and other guidelines

**Commissioner response:** The Commissioner understands the concerns. However, in the past the title companies have failed to make sufficient, if any, collection efforts when producers have failed to pay the cancellation fees. Therefore, there is no indication that a "safe harbor" for collection efforts will correct the past abuses.

Implementation Plan  
R 2008-21

This rule-making implements recently enacted RCW 48.29.210(2) that allows the Commissioner to define what things of value a title insurance insurer or title insurance agent is permitted to give to any person in a position to refer or influence the referral of title insurance business.

The CR 101 and CR 102 with text were mailed to the general rule-making list, emailed to the listserv group, and posted on the Commissioner's website. Interested parties had the opportunity to comment on the rule throughout the rule-making process. Four stakeholder meetings were held to solicit input and comments.

The adopted text will be posted on the Commissioner's website, mailed to affected parties, sent to the general rule-making list, and emailed to the listserv group. The Commissioner has created an internal work group to generate consistent technical assistance throughout the agency for inquires regarding the new rule. The Commissioner will also seek the aide of the Washington Land Title Association in informing the title industry of the new rule, and procedures for seeking technical assistance.

The Commissioner will conduct random audits to monitor compliance with the new rule. The division of Consumer Affairs will address complaints and refer complaints for investigation and enforcement by the agency's Legal Division.

BEFORE THE STATE OF WASHINGTON  
OFFICE OF THE INSURANCE COMMISSIONER

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In the Matter of )  
FIRST AMERICAN TITLE INSURANCE )  
COMPANY, )  
 ) ORDER NO. 15-0166  
Authorized Title Insurer. )  
 ) WAOIC No. 461  
 ) NAIC No. 50814  
 )  
 )

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DEPOSITION UPON ORAL EXAMINATION OF  
BARRY WALDEN  
February 23, 2016  
Olympia, Washington

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Taken Before:  
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of  
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Chehalis, WA                      Bremerton, WA  
(360) 330-0262                      (360) 373-9032

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1 going to ask you to close up your binder and put that  
2 off to the side so that the only paper in front of you  
3 is the exhibits. All right. Thank you.

4 Is that a document, preprinted form it looks like,  
5 entitled "Washington State Office of Insurance  
6 Commissioner Original Complaint Details"?

7 A Yes.

8 Q Is that one of the documents that you received in - with  
9 the packet that you received for this case from  
10 Mr. Durphy?

11 A Yes.

12 Q And did you receive it on or about the date of the  
13 complaint, October 24th, 2014, or sometime after that?

14 A After that. Probably a few days.

15 Q And did you receive any instructions or any additional  
16 information verbally from Mr. Durphy concerning this  
17 complaint, sir?

18 A No.

19 Q Do you know whether this complaint had been given to any  
20 of the other employees of the OIC like Ms. Stickler or  
21 Mr. Tompkins or Ms. Gellermann prior to your receipt of  
22 it?

23 A I think that it was given to Tompkins. I don't know if  
24 Marcia had seen it or not.

25 Q And what is the basis for your recollection that it had

1           been given to Mr. Tompkins?

2    A       Well, if you have everything in the case, you probably  
3           saw a note from Tompkins in there.

4    Q       I'm understanding you to say that in the packet that you  
5           got, there was a note from or to Jim Tompkins on this  
6           case?

7    A       Yes.

8    Q       All right. And that was in your packet?

9    A       Yes.

10   Q       All right. Did you ever talk with Mr. Tompkins about  
11          this case?

12   A       I talked to him briefly.

13   Q       When?

14   A       I think it was after I turned it in, after - after -  
15          after it was completed.

16   Q       Okay. Maybe we will go back and take a little larger -  
17          broader stroke of this. Exhibit 1, I'm understanding,  
18          is the initial document that you received a few days  
19          after October 24th, 2014 that was the original case in  
20          this matter - original complaint - given to you by  
21          Mr. Durphy; correct?

22   A       Correct.

23   Q       The receipt of that document, Exhibit 1, is the initial  
24          act of opening the file and commencing your  
25          investigation; is that correct?

1 A Yes.

2 Q All right. When is it you turned in this investigation,  
3 sir?

4 A I don't remember.

5 Q Well, I understand that you are under a general  
6 expectation, certainly not rigid depending on the  
7 complexity of the case, to turn over cases on an average  
8 of every two months?

9 A Well, there is a form included - or should be included  
10 in your packet and on the form is the final - is the  
11 final case is what it is.

12 Q Yep.

13 A And there is - on the front page of that there is a page  
14 that says the date it is completed, so that's --

15 Q Okay.

16 A -- what I would have to see.

17 Q I will see if I have it and show it to you if I do.  
18 Let's go back to Exhibit 1.

19 A Now, are you under assumption that I get this first?

20 Q I thought you indicated that you get a manila folder and  
21 it contains a copy of a complaint. It contains whatever  
22 they want to hand us.

23 A Yep.

24 Q It contains a licensee's producer number and an e-mail  
25 of assignment. That's what I thought you said.

1 BY MR. KINDINGER:

2 Q Handing you what has been marked as Exhibit 10, this is

3 a document entitled, "Consent Order Levying a Fine."

4 A Correct.

5 Q Take a moment and review that document, sir. It is five

6 pages, I believe --

7 A Okay.

8 Q -- six pages doubled-spaced and tell us, when you are

9 done, if you have seen that document, Exhibit 10,

10 before.

11 A No.

12 Q You have never seen the Consent Order Levying a Fine

13 before?

14 A Not this one. I have seen them before --

15 Q Okay.

16 A -- but usually it is in conjunction with looking for

17 them.

18 Q Okay.

19 A I guess I should rephrase that, that sometimes during my

20 investigations I look for these types of things.

21 Q To find prior violations of the - of the person against

22 whom a complaint is lodged?

23 A There you go.

24 Q Did you do that in this case?

25 A Yes.

1 before? Before you answer, I would like you to read it.

2 A Okay.

3 Q Have you ever discussed any part of this Notice of  
4 Hearing with anyone before?

5 A No.

6 Q Would you turn, please, to Page 3 of Exhibit 13,  
7 Paragraph 10? Directing your attention to the second  
8 sentence in Paragraph 10, it says, "Even if the First  
9 American event had been a legitimate trade organization  
10 function, it exceeded the contribution limit since it  
11 refused to add to the \$875 venue rental cost to the  
12 value of its employee time in coordinating with Zillow,  
13 finding a co-sponsor for the lunch, creating the flyer,  
14 arranging for the venue," as required by the WAC  
15 citation."

16 Do you see that?

17 A Mm-hmm.

18 Q Do you have any evidence whatsoever that First American  
19 refused to provide you or the Department any information  
20 that was specifically requested?

21 A I don't have any knowledge of that.

22 Q Okay. So I'm understanding you to say, "I don't have  
23 any firsthand knowledge of this allegation at all;" is  
24 that correct?

25 A Well, I have never seen this piece of paper - this

1 Q Okay.

2 A No, I didn't.

3 Q Okay. Are you aware of any evidence that would  
4 demonstrate a refusal of First American to provide any  
5 information that was requested in connection with this  
6 case that was specifically requested?

7 A No.

8 Q Directing your attention to Paragraph 8 on Exhibit 13.  
9 Read the first sentence to yourself of Paragraph 8,  
10 please, and tell me when you are done.

11 A Okay.

12 Q What possible evidence do you have or are you aware of  
13 that would support the proposition that every member of  
14 the SCCAR - full members and affiliate members - were  
15 notified and invited to this event?

16 A I don't have any.

17 Q And what I understand from your earlier testimony, you  
18 didn't request - raise that question or ask for  
19 documentation on that; correct?

20 A Right.

21 Q And also in Paragraph 8, sir, where the line - second  
22 line phrase - it says - well, strike that.

23 Directing your attention to Paragraph 7. Do you have  
24 any evidence at all that First American determined who  
25 was to be invited or to whom notice of this event was

STATE OF WASHINGTON  
OFFICE OF THE INSURANCE COMMISSIONER

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In the Matter of:	)	Docket No. 15 0166
FIRST AMERICAN TITLE	)	WA OIC# 461
INSURANCE COMPANY,	)	NAIC NO. 50814
	)	
Authorized Title	)	
Insurer.	)	

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DEPOSITION UPON ORAL EXAMINATION OF  
RUTH HOPKINS

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TIME: 1:00 PM

DATE TAKEN: February 22, 2016

LOCATION: Island County Courthouse  
Administration Building  
1 NE 7th Street  
Room 116  
Coupeville, Washington 98239

REPORTED BY: Debra L. Rietfort, CSR No. 2286

1 and participating with various associations, do you have a  
2 general awareness that when notices are sent out to  
3 affiliate members to the attention of designated contact  
4 persons and they receive and open the notices whether a  
5 record is made that the notices were received and opened or  
6 do you have any knowledge?

7 A. I don't believe a record was written down that it  
8 was received.

9 Q. An electronic record. Do you have any general  
10 understanding that that's just the way the industry works.  
11 Send out a notice to members in the association, if the  
12 association members get it an electronic record is made  
13 that they opened it.

14 A. Correct.

15 Q. Did you make any inquiry of either Mr. Fetzer or  
16 Ms. Champion-Myers as to whether there was any chance that  
17 they received it and forgot or just opened it?

18 A. I didn't have any reason to doubt what they were  
19 telling me was the truth.

20 Q. Okay. So based on the information that you've  
21 shared with us you say I called SCCAR?

22 A. Uh-huh.

23 Q. Do you Remember when that was?

24 A. It was that same day. Whatever day she sent it to  
25 me.

BEFORE THE STATE OF WASHINGTON  
OFFICE OF THE INSURANCE COMMISSIONER

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In the Matter of )  
FIRST AMERICAN TITLE INSURANCE )  
COMPANY, )  
 ) ORDER NO. 15-0166  
Authorized Title Insurer. )  
 ) WAOIC No. 461  
 ) NAIC No. 50814  
 )  
 )

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DEPOSITION UPON ORAL EXAMINATION OF  
ANNALISA GELLERMANN  
March 22, 2016  
Olympia, Washington

---

Taken Before:  
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1 newsletters, do you have any evidence at all that the  
2 notice of this event wasn't sent to all of the members?

3 A I'm not familiar with the details --

4 Q Okay.

5 A -- of the file.

6 Q As a lawyer and the Deputy Commissioner of Legal  
7 Affairs, if your - if the facts were that notice of this  
8 event was sent and made available equally to all  
9 members, regular members and affiliate members, would  
10 you agree there is no unlawful conduct as a result of  
11 discrimination of the event being presented?

12 A I would agree that if they sent it to everyone, then  
13 there would be no violation based on the fact that they  
14 only sent it to a part.

15 Q Okay. So that's a material item of inquiry in order to  
16 determine whether there had been a violation of that  
17 trade association Section 220; correct?

18 A Based on the fact that it forms part of the complaint --

19 Q Yeah.

20 A -- it should be followed up on.

21 Q You would expect on such a central and material fact,  
22 that your investigator would have inquired into that,  
23 would you not?

24 A I would expect them to follow up on all the facts in the  
25 complaint.

1 A I don't recall any discussion on that element. It is  
2 typically not discussed.

3 Q Am I - am I correct, ma'am, that the Department  
4 published no schedule of fines for violations or posts  
5 elements to which it attaches a dollar amount for fines  
6 if they are going to be imposed?

7 A Our statute, of course, identifies fine amounts and fine  
8 ranges, but - but if your answer (sic) is that we have  
9 something that you can look at to say, "I did this  
10 violation and it has these factors, here is my penalty"  
11 - I would call that a matrix or something - we don't  
12 have that. We don't publish that.

13 Q So does it follow from that, ma'am, that regulated  
14 entities under Title 48 have no ability to understand  
15 what fines will result from what particular actions  
16 before the Department determines that there have been  
17 violations?

18 A That's not true.

19 Q Okay. Then I want to understand what the truth is.  
20 Explain to me how regulated industries - or what is out  
21 there for regulated industries to understand an amount  
22 of a fine for a particular violation that the Department  
23 deems occurred.

24 A Well, there is - there are the statutes and regulations  
25 which lay out the statutory ranges, so that would be the

1 first piece. The second piece would be we maintain  
2 online our disciplinary orders that are issued through  
3 the hearings process. Those are the same disciplinary  
4 orders that we look at to understand precedent, what  
5 fines have been laid before and, of course, the public  
6 and companies have access to those.

7 It is not - it is not dispositive of what might be  
8 levied, but it can give an indication. And then I know  
9 that companies are aware of the factors that we consider  
10 in the Compliance Group. That's also public knowledge.

11 Q Public knowledge?

12 A I believe it is on our website, but I have certainly  
13 provided it to many companies over the years.

14 Q And I want to make sure that I have understood you  
15 accurately. I have understood you to say we don't have  
16 any matrix that would identify or affix a value that  
17 would be attributed to any of these factors on the  
18 agenda, but we believe it is not true that industry  
19 persons can't know in advance what the amount of fines  
20 might be if we deem there is a violation because the  
21 source of information they have are two things - three  
22 things: One, the statute, that would be RCW 05.185.

23 Have I got that? Is that correct?

24 A I don't know it exact - whichever statute contains the  
25 fine - the fine authority and indicates the range for



OFFICE OF  
INSURANCE COMMISSIONER

IN THE MATTER OF

CHICAGO TITLE INSURANCE  
COMPANY,

Respondent.

ORDER NO. 11-0200

CONSENT ORDER  
LEVYING A FINE

The Insurance Commissioner of the State of Washington, pursuant to the authority set forth in RCW 48.05.185, having reviewed the official records and files of the Office of the Insurance Commissioner ("OIC"), makes the following:

**FINDINGS OF FACT:**

1. Chicago Title Insurance Company, ("Chicago Title" or "the Company") is an authorized insurer domiciled in Nebraska. Chicago Title issues title insurance.
2. Chicago Title paid \$250 to sponsor the 2011 RE Barcamp event held in March 2011. RE Barcamp is a free-of-charge gathering of unaffiliated real estate professionals who meet annually around the country for information and networking. Attendees participate only once a year without advance coordination or preparation. The program's website states that an RE Barcamp is a "network of user-generated conferences –open, participatory workshop events, whose content is provided by participants." No one is paid to deliver a session, and RE Barcamp's logistics are run by unpaid volunteers.

**CONCLUSIONS OF LAW:**

1. By sponsoring a promotional function, including a convention, off the title company's premises, whether the function is self-promotional or not, Chicago Title violated WAC 284-29-260(1)(a)(iii).
2. RCW 48.05.185 authorizes the Insurance Commissioner to impose a fine in lieu of the suspension or revocation of a company's license or certificate of authority.

**CONSENT TO ORDER:**

Chicago Title, acknowledging its duty to comply fully with the applicable laws of the State of Washington, consents to the following in consideration of its desire to resolve this matter without further administrative or judicial proceedings. The Insurance Commissioner consents to settle the matter in consideration of the Company's payment of a fine on such terms and conditions as are set forth below.

1. Chicago Title consents to the entry of this Order, waives any and all hearing rights, and further administrative or judicial challenges to this Order.
2. By agreement of the parties, the Insurance Commissioner will impose a fine of \$500.00 (Five Hundred Dollars).
3. The Company's failure to timely pay the fine constitutes grounds for suspension and/or revocation of the Company's certificate of authority and shall result in the recovery of the fine through a civil action brought on behalf of the Insurance Commissioner by the Attorney General of the State of Washington.

EXECUTED this 4<sup>th</sup> day of October, 2011.

CHICAGO TITLE INSURANCE COMPANY

By: 

Printed Name: Ryan M. Ludwick

Corporate Title: Assistant Vice President  
Regulatory Counsel

**ORDER**

Pursuant to the foregoing Findings of Fact, Conclusions of Law, and Consent to Order, the Insurance Commissioner hereby Orders as follows:

1. Chicago Title Insurance Company is ordered to pay a fine in the amount of \$500.00 (Five Hundred Dollars) within thirty days of the entry of this Order.

2. The Company's failure to timely pay the fine constitutes grounds for suspension and/or revocation of the Company's certificate of authority and shall result in the recovery of the fine through a civil action brought on behalf of the Insurance Commissioner by the Attorney General of the State of Washington.

ENTERED AT TUMWATER, WASHINGTON, this \_\_\_ day of \_\_\_\_\_, 2011.

MIKE KREIDLER  
Insurance Commissioner

By: \_\_\_\_\_  
Marcia G. Stickler  
Staff Attorney  
Legal Affairs Division

2100413714

CHICAGO TITLE INSURANCE COMPANY

Line	Date	Invoice Number	Descriptions	Amount	Discount	Net Amount
1	08/12/11	OFF08121150000	CONSENT ORDER 110200	\$500.00	\$0.00	\$500.00
Total				\$500.00	\$0.00	\$500.00

FOLD

WIPSC0811VBL (9110)

FOLD

FOLD

FOLD



CHICAGO TITLE INSURANCE COMPANY  
 601 RIVERSIDE AVE BLDG 5, 6TH FL  
 JACKSONVILLE, FL 32204  
 (866) 993-5512

HARRIS BANK ROSSELLE  
 Roselle, IL

2100413714

70-1558/719

Date 09/09/11  
 Amount \$500.00

\*\*Five Hundred Dollars And 00 Cents\*\*\*\*\*

Pay to the Order of: OFFICE OF THE INSURANCE COMMISSIONER  
 5000 CAPITOL BLVD  
 TUMWATER, WA 98501

*Jack K. ...*

Security features included. Details on back.

⑈ 2100413714 ⑆ ⑆ 071915580 ⑆ 04 ⑆ 218 ⑆ 433 ⑆ 1 ⑆



OFFICE OF  
INSURANCE COMMISSIONER

IN THE MATTER OF

OLD REPUBLIC TITLE, LTD.,

Licensee.

ORDER NO. 11-0199

CONSENT ORDER  
LEVYING A FINE

The Insurance Commissioner of the State of Washington, pursuant to the authority set forth in RCW 48.05.185, having reviewed the official records and files of the Office of the Insurance Commissioner ("OIC"), makes the following:

**FINDINGS OF FACT:**

1. Old Republic Title, Ltd. ("Old Republic" or "the Licensee") is a licensed title insurance agent. Old Republic writes title insurance exclusively on behalf of Old Republic National Title Insurance Company.

2. Old Republic paid \$250 to sponsor the RE Barcamp event held in March 2011. RE Barcamp is a free-of-charge gathering of unaffiliated real estate professionals who meet annually around the country for information and networking. Attendees participate only once a year without advance coordination or preparation. The program's website states that an RE Barcamp is a "network of user-generated conferences -open, participatory workshop events, whose content is provided by participants." No one is paid to deliver a session, and RE Barcamp's logistics are run by unpaid volunteers.

**CONCLUSIONS OF LAW:**

1. By sponsoring a promotional function, including a convention, off the title company's premises, whether the function is self-promotional or not, Old Republic violated WAC 284-29-260(1)(a)(iii).

2. RCW 48.17.560 states that after a hearing or upon stipulation by the licensee or insurance education provider, and in addition to or in lieu of suspension, revocation, or refusal to renew any such license or insurance education provider approval, the Commissioner may levy a fine upon the licensee or insurance education provider of not more than \$1,000 per violation of the insurance code.

**CONSENT TO ORDER:**

Old Republic, acknowledging its duty to comply fully with the applicable laws of the State of Washington, consents to the following in consideration of its desire to resolve this matter without further administrative or judicial proceedings. The Insurance Commissioner consents to settle the matter in consideration of the Licensee's payment of a fine on such terms and conditions as are set forth below.

1. Old Republic consents to the entry of this Order, waives any and all hearing rights, and further administrative or judicial challenges to this Order.

2. By agreement of the parties, the Insurance Commissioner will impose a fine of \$500.00 (Five Hundred Dollars) to be paid within thirty days of the entry of this Order.

3. Old Republic understands and agrees that any future failure to comply with the regulation that is the subject of this Order constitutes grounds for further penalties, which may be imposed in response to further violations.

4. Old Republic's failure to timely pay this fine and to adhere to the conditions shall constitute grounds for revocation of its license as a title insurance agent, and shall result in the recovery of the fine through a civil action brought on behalf of the Insurance Commissioner by the Attorney General of the State of Washington.

EXECUTED this 23rd day of September, 2011.

OLD REPUBLIC TITLE, LTD.

By: Jolene Bailey

Printed Name: Jolene Bailey

Corporate Title: Senior Vice President  
and Secretary

ORDER

Pursuant to the foregoing Findings of Fact, Conclusions of Law, and Consent to Order, the Insurance Commissioner hereby Orders as follows:

1. Old Republic shall pay a fine in the amount of \$500.00 (Five Hundred Dollars) to be paid within thirty days of the entry of this Order.

2. Old Republic's failure to pay the fine within the time limit set forth above shall result in the revocation of the Company's license as a title insurance agent and in the recovery of the fine through a civil action brought on behalf of the Insurance Commissioner by the Attorney General of the State of Washington.

ENTERED AT TUMWATER, WASHINGTON, this 26<sup>th</sup> day of September, 2011.

MIKE KREIDLER  
Insurance Commissioner

By   
Marcia G. Stickler,  
Legal Affairs Division

MIKE KREIDLER  
STATE INSURANCE COMMISSIONER

STATE OF WASHINGTON



OFFICE OF  
INSURANCE COMMISSIONER

TUMWATER OFFICE,  
P. O. BOX 40255  
OLYMPIA, WA 98504-0255

Phone: (360) 725-7000

March 10, 2016

Michael J. McLaughlin  
Pend Oreille Title Company  
312 S Washington Avenue  
Newport WA 99156

Re: Pend Oreille Title Company  
Proposed Consent Order Levying a Fine, Order No. 15-0294

Dear Mr. McLaughlin:

Enclosed is a revised proposed Consent Order Levying a Fine, imposing a Five Thousand Dollar fine with Three Thousand Dollars suspended for an imposed fine of Two Thousand Dollars. We acknowledge receipt of your payment of Two Thousand Dollars on January 19, 2016.

Please have the appropriate corporate representative sign the Consent Order and return it to our office by **April 11, 2016**, at the following address:

Marcia Stickler  
Office of the Insurance Commissioner  
P O Box 40255  
Olympia WA 98504-0255.

If you have questions regarding this matter, please contact me by email at [MarciaS@oic.wa.gov](mailto:MarciaS@oic.wa.gov).

Sincerely,

A handwritten signature in cursive script that reads "Marcia G. Stickler".

MARCIA G. STICKLER, JD, LLM  
Insurance Enforcement Specialist  
Legal Affairs Division

STATE OF WASHINGTON  
OFFICE OF THE INSURANCE COMMISSIONER

*In the Matter of*

PEND OREILLE TITLE COMPANY,

Licensee.

Order No. 15-0294  
WAOIC No. 31009  
FEIN 91-0884710

CONSENT ORDER LEVYING  
A FINE

This Consent Order Levying a Fine ("Order") is entered into by the Insurance Commissioner of the state of Washington ("Insurance Commissioner"), acting pursuant to the authority set forth in RCW 48.02.060, RCW 48.17.530, and RCW 48.17.560, and Licensee Pend Oreille Title Company. This Order is a public record and will be disseminated pursuant to Title 48 RCW and the Insurance Commissioner's policies and procedures.

**BASIS:**

1. Pend Oreille Title Company ("Licensee") is a resident title insurance agent licensed to do business in the state of Washington and has been licensed in Washington State since December 16, 1982.

2. In 2013, the Washington Legislature passed House Bill 1035, which requires title insurance companies and title insurance agents to submit annual data reports to a statistical reporting agent designated by the Insurance Commissioner. In late 2014, the Insurance Commissioner designated Michael Lamb, LLC as the statistical reporting agent. Reports for year 2013 were to have been due on September 1, 2014, according to WAC 284-29A-110(5). This due date was extended to December 31, 2014, inasmuch as the Insurance Commissioner had not yet designated a statistical reporting agent by September 1, 2014.

CONSENT ORDER LEVYING A FINE  
ORDER NO. 15-0294

LA 1330620 1

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State of Washington  
Office of the Insurance Commissioner  
PO Box 40255  
Olympia, WA 98504-0255

3. Reports for year 2014 were due on May 31, 2015, under RCW 48.29.017(2) and WAC 284-29A-110(1). Licensee failed to send reports for 2013 and 2014.

4. Through various email notices to all Washington title insurance agents and title insurers, Mr. Lamb tried to contact Licensee, but did not get any responses. He sent an individual email directly to Licensee on January 15, 2015, but again got no response. By email dated October 21, 2015, Mr. Lamb advised the Insurance Commissioner that Licensee had not submitted its reports and was not responding to his attempts to communicate. The following day, Jim Tompkins, Senior Policy Analyst for the Insurance Commissioner, sent Licensee another email requesting a response. Licensee has not responded to Mr. Tompkins. Reporting forms, instructions, and other information about the reports have been posted on the Insurance Commissioner's website since late 2014.

5. RCW 48.17.530(1)(b) allows the Insurance Commissioner to place on probation, suspend, revoke, or refuse to issue or renew a title insurance agent's license or levy a civil penalty in accordance with RCW 48.17.560 for violating any insurance laws, or violating any rule, subpoena, or order of the Insurance Commissioner or of another state's insurance commissioner;

6. RCW 48.17.475 provides that every title insurance agent licensed under this chapter shall promptly reply in writing to an inquiry of the Insurance Commissioner relative to the business of insurance. By failing to promptly respond to an inquiry of the Insurance Commissioner regarding the business of insurance, Licensee violated RCW 48.17.475.

7. RCW 48.29.017(2) provides upon designation of a statistical reporting agent by the Insurance Commissioner under subsection (1) of this section all authorized title insurance companies and licensed title insurance agents must annually, by May 31st, file a report with the statistical reporting agent of their policy issuance, business income, expenses, and loss experience in this state. By failing to timely submit a report with the statistical reporting agent of its policy issuance, business income, expenses, and loss experience in this state for years 2013 and 2014, Licensee violated RCW 48.29.017(2).

8. WAC 284-29A-110 provides each title insurer and title insurance agent must report premium, policy count, and expense data by county annually to the statistical reporting agent designated by the Insurance Commissioner for the preceding calendar year by May 31st of each year. By failing to timely submit reports of its premium, policy count, and expense data

for years 2013 and 2014 with the Insurance Commissioner's designated statistical reporting agent, Licensee violated WAC 284-29A-110.

9. Licensee's failure to timely submit the statistical data reports to the Insurance Commissioner's designated statistical reporting agent and failure to respond to the Insurance Commissioner's inquiries, in violation of RCW 48.17.017(2), RCW 48.17.475, and WAC 284-29A-110, justify the imposition of a fine under RCW 48.17.560.

**CONSENT TO ORDER:**

The Insurance Commissioner of the state of Washington and the Licensee agree that the best interest of the public will be served by entering into this Order. NOW, THEREFORE, the Licensee consents to the following in consideration of its desire to resolve this matter without further administrative or judicial proceedings. The Insurance Commissioner consents to settle this matter in consideration of the Licensee's payment of a fine, and upon such terms and conditions as are set forth below:

1. The Licensee acknowledges its duty to comply fully with the applicable laws of the state of Washington.

2. The Licensee consents to the entry of this Order, waives any and all hearing or other procedural rights, and further administrative or judicial challenges to this Order.

3. By agreement of the parties, the Insurance Commissioner will impose a fine of Five Thousand Dollars (\$5,000), Three Thousand Dollars (\$3,000) of which is suspended pending no further violations of the laws and rules that are the subject of this Order for a period of two years.

4. The Licensee understands and agrees that any further failure to comply with the statutes and/or regulations that are the subject of this Order constitutes grounds for further penalties, which may be imposed in direct response to further violations.

5. This Order and the violations set forth herein constitute admissible evidence that may be considered in any future action by the Insurance Commissioner involving the Licensee. However, the facts of this Order, and any provision, finding or conclusion contained herein does not, and is not intended to, determine any factual or legal issue or have any preclusive or collateral estoppel effects in any lawsuit by any party other than the Insurance Commissioner.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

PEND OREILLE TITLE COMPANY

By: \_\_\_\_\_

Title: \_\_\_\_\_

Printed Name: \_\_\_\_\_

**AGREED ORDER:**

Pursuant to the foregoing factual Basis and Consent to Order, the Insurance Commissioner of the state of Washington hereby Orders as follows:

1. The Licensee shall pay a fine in the amount of Five Thousand Dollars (\$5,000), Three Thousand Dollars (\$3,000) of which is suspended pending no further violations of the laws and rules that are the subject of this Order for a period of two years, receipt of which is hereby acknowledged by the Insurance Commissioner.

2. This Order and the violations set forth herein constitute admissible evidence that may be considered in any future action by the Insurance Commissioner involving the Licensee. However, the facts of this Order, and any provision, finding or conclusion contained herein does not, and is not intended to, determine any factual or legal issue or have any preclusive or collateral estoppel effects in any lawsuit by any party other than the Insurance Commissioner.

ENTERED at Tumwater, Washington, this \_\_\_\_\_ day of \_\_\_\_\_, 2016.



MIKE KREIDLER  
Insurance Commissioner

By and through his designee

\_\_\_\_\_  
Marcia G. Stickler  
Insurance Enforcement Specialist  
Legal Affairs Division

CONSENT ORDER LEVYING A FINE  
ORDER NO. 15-0294

State of Washington  
Office of the Insurance Commissioner  
PO Box 40255  
Olympia, WA 98504-0255

STATE OF WASHINGTON  
OFFICE OF THE INSURANCE COMMISSIONER

*In the Matter of*

**Cascade Title Company of Benton  
Franklin Counties,**

Licensee.

Order No. 15-0198

WAOIC No. 161652

FEIN 91-1732146

**CONSENT ORDER LEVYING  
A FINE**

This Consent Order Levying a Fine ("Order") is entered into by the Insurance Commissioner of the state of Washington ("Insurance Commissioner"), acting pursuant to the authority set forth in RCW 48.02.060, RCW 48.17.530 and RCW 48.17.560 and Licensee Cascade Title Company of Benton Franklin Counties. This Order is a public record and will be disseminated pursuant to Title 48 RCW and the Insurance Commissioner's policies and procedures.

**BASIS:**

1. Cascade Title Company of Benton Franklin Counties ("the Licensee") is a title insurance agent licensed to do business in the state of Washington since January 10, 2000.
2. The Office of the Insurance Commissioner received a complaint from a competitor of the Licensee who stated that the Licensee co-sponsored a Community Service Day event on June 5, 2015, by providing a lunch for employees of Windermere Real Estate at the Windermere office location in the Tri Cities area. The competitor had been approached by Windermere to provide a lunch or labor in serving lunch to Windermere employees on their community service day. The competitor declined, as it would be a violation of WAC 284-29-260(1)(a). As a result, the competitor says that it was hurt in its business relationship with Windermere.
3. During the Insurance Commissioner's investigation, Pat Doherty ("Doherty"), Licensee's designated responsible person, confirmed that the Licensee was asked by

CONSENT ORDER LEVYING A FINE  
ORDER NO. 15-0198

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Office of the Insurance Commissioner  
PO Box 40255  
Olympia, WA 98504-0255

1279887

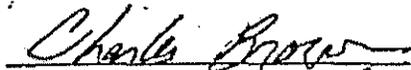
2. This Order and the violations set forth herein constitute admissible evidence that may be considered in any future action by the Insurance Commissioner involving the Licensee. However, the facts of this Order, and any provision, finding or conclusion contained herein does not, and is not intended to, determine any factual or legal issue or have any preclusive or collateral estoppel effects in any lawsuit by any party other than the Insurance Commissioner.

Entered at Tumwater, Washington, this 31<sup>st</sup> day of August 2015.



MIKE KREIDLER  
Insurance Commissioner

By and through his designee



MARCIA G. STICKLER / *By Charles Brown*  
Insurance Enforcement Specialist  
Legal Affairs Division

STATE OF WASHINGTON  
OFFICE OF THE INSURANCE COMMISSIONER

*In the Matter of*

NORTHWEST TITLE, LLC,  
  
Licensee.

ORDER NO. 15-0080

WAOIC No. 185352

FEIN 52-2339172

CONSENT ORDER LEVYING  
A FINE

This Consent Order Levying a Fine ("Order") is entered into by the Insurance Commissioner of the state of Washington ("Insurance Commissioner"), acting pursuant to the authority set forth in RCW 48.02.060, RCW 48.17.530 and RCW 48.17.560 and Northwest Title, LLC, Licensee.

**BASIS:**

1. Northwest Title, LLC ( dba "Nextitle") is a licensed title insurance agent first licensed in October 2001. It has five active appointments. The Office of the Insurance Commissioner ("OIC") received a complaint from a competitor of Nextitle that he had in turn received from a real estate agent. Nextitle was sending real estate information that included median prices, supply and demand, and median home profiles to real estate agents without charge. The agent could get several such reports in different areas of the country, or different zip codes within an area. The material in the reports was compiled by Altos Research, LLC.
2. Upon OIC's inquiry, Nextitle admitted that it had been sending these property reports out to approximately 750 subscribers on a weekly or monthly basis without charge. It

estimated that since January 2014, Nextitle had sent up to 2,000 such reports out to real estate agents, mortgage lenders, and other real estate professionals for King, Snohomish, Pierce, Thurston, and Clark counties. Nextitle stated that it cost it \$245 per month for all kinds of reports from Altos Research, LLC. Altos Research, LLC's website shows numerous types of real estate information available, including market price trends, days on the market, and inventory availability. Nextitle employees input a subscriber's geographic preference, report frequency, and enter the email address into Nextitle's platform to create a subscription for each customer.

3. WAC 284-29-210(5) states that a title company must not give a producer reports containing publicly recorded information, comparable sale information, appraisals, estimates, or income production potential, information kits or similar packages containing information about one or more parcels of real property, except as permitted by this section, without charging and actually receiving payment for the actual cost of the work performed and the material provided (for example, costs related to providing farm packages, labels, lot book reports, home books, and tax information).

4. RCW 48.17.530(1)(b) allows the Insurance Commissioner to place on probation, suspend, revoke, or refuse to issue or renew a title insurance agent's license, or levy a civil penalty in accordance with RCW 48.17.560, for violating any insurance laws, or violating any rule, subpoena, or order of the Commissioner. By sending real estate information that included median prices, supply and demand, and median home profiles to real estate agents without charge, the Licensee violated RCW 48.17.530(1)(b), justifying the imposition of a fine.

#### **CONSENT TO ORDER:**

The Insurance Commissioner of the state of Washington and the Licensee agree that the best interest of the public will be served by entering into this Order. NOW, THEREFORE, the Licensee consents to the following in consideration of its desire to resolve this matter without further administrative or judicial proceedings. The Insurance Commissioner consents to settle this matter in consideration of the Licensee's payment of a fine and upon such terms and conditions as are set forth below:

1. The Licensee acknowledges its duty to comply fully with the applicable laws of the state of Washington.

2. The Licensee consents to the entry of this Order, waives any and all hearing or other procedural rights, and further administrative or judicial challenges to this Order.

3. By agreement of the parties, the Insurance Commissioner will impose a fine of \$5,000.00 (Five Thousand Dollars), to be paid by May 1, 2015.

4. The Licensee understands and agrees that any further failure to comply with the statutes and/or regulations that are the subject of this Order constitutes grounds for further penalties, which may be imposed in direct response to further violations.

5. This Order and the violations set forth herein constitute admissible evidence that may be considered in any future action by the Insurance Commissioner involving the Licensee. However, the facts of this Order, and any provision, finding or conclusion contained herein does not, and is not intended to, determine any factual or legal issue or have any preclusive or collateral estoppel effects in any lawsuit by any party other than the Insurance Commissioner.

EXECUTED this 7<sup>th</sup> day of April, 2015.

NORTHWEST TITLE, LLC, DBA  
NEXTITLE

Signature: 

Printed Name: Erin Sheckler

**AGREED ORDER:**

Pursuant to the foregoing factual Basis and Consent to Order, the Insurance Commissioner of the state of Washington hereby Orders as follows:

1. The Licensee shall pay a fine in the amount of \$5,000.00 (Five Thousand Dollars), receipt of which is hereby acknowledged by the Insurance Commissioner.

2. This Order and the violations set forth herein constitute admissible evidence that may be considered in any future action by the Insurance Commissioner involving the Licensee. However, the facts of this Order, and any provision, finding or conclusion contained herein does not, and is not intended to, determine any factual or legal issue or have any preclusive or collateral estoppel effects in any lawsuit by any party other than the Insurance Commissioner.

ENTERED this 27<sup>th</sup> day of April 2015.



MIKE KREIDLER  
Insurance Commissioner

By and through his designee



MARCIA G. STICKLER  
Insurance Enforcement Specialist  
Legal Affairs Division

STATE OF WASHINGTON

Phone: (360) 725-7000  
www.insurance.wa.gov

MIKE KREIDLER  
STATE INSURANCE COMMISSIONER



J00433973 01/24/12 100,000.00 ✓

OFFICE OF  
INSURANCE COMMISSIONER

IN THE MATTER OF

FIDELITY NATIONAL TITLE  
INSURANCE COMPANY-and,  
CHICAGO TITLE INSURANCE  
COMPANY,

ORDER NO. 11-0153

CONSENT ORDER  
LEVYING FINE

Respondents

The Insurance Commissioner of the State of Washington, pursuant to the authority set forth in RCW 48.05.185, having reviewed the official records and files of the Office of the Insurance Commissioner ("OIC"), makes the following:

**FINDINGS OF FACT:**

1. Fidelity National Title Insurance Company, ("Fidelity"), is an authorized insurer domiciled in California. Chicago Title Insurance Company, ("Chicago Title") is an authorized insurer domiciled in Nebraska. The companies ("Respondents" or "the Companies") issue title insurance. The Companies are subsidiaries of Fidelity National Financial, Inc., a Delaware domiciled publicly traded holding company.

2. EC Purchasing.com, Inc. is a Delaware domiciled company that negotiates discounts on a wide variety of products and services for its members. It is not in the business of title insurance and is not licensed by the Office of the Insurance Commissioner. Employees and agents of Respondents offered their customers, producers of title insurance business, the opportunity to register for membership in EC Purchasing, a subsidiary of Fidelity National Title Group, Inc. Members of EC Purchasing receive discounts on a wide array of products and services.

3. The Companies' marketing materials promoted the discounts as an additional benefit to their producer "customers" who were in a position to refer title business to the Companies.



4. Sales Representatives of the Companies provided links on their personal websites to EC Purchasing.com, Inc. and provided confirmation to EC Purchasing.com, Inc. that producers of title insurance business requesting membership in EC Purchasing were, in fact, engaged in the real estate, financial and/or real estate industries, a requirement of EC Purchasing.com, Inc.'s vendors.

5. The Companies are currently subject to a Cease and Desist order in Docket Number 11-0158 which will be superseded by this Consent Order.

#### **CONCLUSIONS OF LAW:**

1. By promoting access to discounts, for non-title insurance related products, to producers of title insurance business through their sales representatives, the Companies violated RCW 48.29.210(2).

2. RCW 48.05.185 authorizes the Insurance Commissioner to impose a fine in lieu of the suspension or revocation of a company's license or certificate of authority.

#### **CONSENT TO ORDER:**

Respondents, acknowledging their duty to comply fully with the applicable laws of the State of Washington, consent to the following in consideration of their desire to resolve this matter without further administrative or judicial proceedings. The Insurance Commissioner consents to settle the matter in consideration of the Respondents' payment of a fine on such terms and conditions as are set forth below.

1. The Respondents consent to the entry of this Order, waive any and all hearing rights, and further administrative or judicial challenges to this Order.

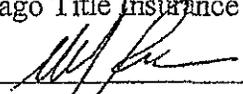
2. The Cease and Desist Order entered in Docket Number 11-0158 shall be and is hereby withdrawn as to all parties named therein. The Companies shall cease and desist from advertising the availability of membership in EC Purchasing in any form that constitutes a violation of RCW 48.29.210(2).

3. By agreement of the parties, the Insurance Commissioner will impose a fine of \$100,000.00 (One Hundred Thousand Dollars) against Fidelity National Title Insurance Company and Chicago Title Insurance Company, liability for which shall be joint and several. The fine of \$100,000 must be paid, in full, within thirty days of the date of entry of

this Order. Failure to pay the fine and to comply with the stated conditions shall constitute grounds for revocation of the Companies' certificates of authority and in a civil action brought on behalf of the Insurance Commissioner by the Attorney General of the State of Washington.

EXECUTED this 17<sup>th</sup> Day of January, 2012.

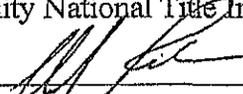
Chicago Title Insurance Company

By: 

Printed Name: Michael J. Rich

Corporate Title: Vice President

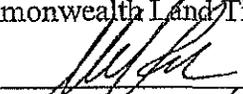
Fidelity National Title Insurance Company

By: 

Printed Name: Michael J. Rich

Corporate Title: Vice President

Commonwealth Land Title Insurance Company, as to Paragraph 1 of the Order only

By: 

Printed Name: Michael J. Rich

Corporate Title: Vice President

ORDER:

Pursuant to the foregoing Findings of Fact, Conclusions of Law, and Consent to Order, the Insurance Commissioner hereby Orders as follows:

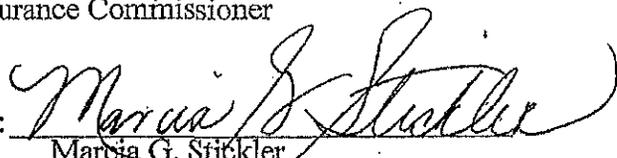
1. The Cease and Desist Order entered in Docket Number 11-0158 shall be and is hereby withdrawn as to all parties named therein. The Companies shall cease and desist from advertising the availability of membership in EC Purchasing in any form that constitutes a violation of RCW 48.29.210(2).

2. The Companies shall pay a fine of \$100,000.00 (One Hundred Thousand Dollars), the liability for which is joint and several, within thirty days of the date of entry of this Order. Failure to pay the fine shall constitute grounds for revocation of the Companies' certificates of authority and in the recovery of the fine amount through a civil action brought on behalf of the Insurance Commissioner by the Attorney General of the State of Washington.

ENTERED AT TUMWATER, WASHINGTON, this 25<sup>th</sup> day of January, 2012.

MIKE KREIDLER  
Insurance Commissioner

By:



Marcia G. Stickler  
Staff Attorney  
Legal Affairs Division



000031815 06/21/07 2:500.00 ✓

OFFICE OF  
INSURANCE COMMISSIONER

*In The Matter Of:*

FIRST AMERICAN TITLE  
INSURANCE COMPANY

An Authorized Insurer

No. D07-154

CONSENT ORDER  
LEVYING A FINE

Comes Now the Insurance Commissioner of the State of Washington, pursuant to the authority set forth in RCW 48.02.080, and makes the following:

**FINDINGS OF FACT:**

1. First American Title Insurance Company ("FATCO") is authorized to issue title insurance in Washington.
2. The Office of the Insurance Commissioner examined the expense records of FATCO for the period from November 15, 2006 through February 15, 2007 in King, Pierce, and Snohomish Counties, Washington. The examination was to determine whether FATCO was abiding by the requirements of WAC 284-30-800, which prohibits inducements, payments, or rewards exceeding \$25 per person, per year, for the placement of title insurance.
3. FATCO offers licensed real estate professionals "clock hour classes," continuing education seminars that they must have to maintain their licenses. On November 15, 2006, FATCO presented a 4-clock hour class at its Tacoma, Washington office on the subject of escrow to eight realtors, free of charge.
4. On December 6, 2006, FATCO presented a 4-clock hour class at Keller Williams' Puyallup, Washington office on the subject of escrow to four Keller Williams realtors, free of charge.
5. On January 10, 2007, FATCO presented a 4-clock hour class at its Summer, Washington office on the subject of escrow to seventeen realtors, free of charge.

6. On February 14, 2007, FATCO presented a 4-clock hour class at Godfather's Pizza in Bonney Lake, Washington on the subject of escrow to sixteen realtors, free of charge.

7. FATCO offered 31 clock hour classes to realtors during the period under review for which it charged a fee, usually between \$15 to \$40 dollars per person. In setting the price for the classes, FATCO failed to include the cost of the advertisement, the room, or the FATCO instructor's preparation and teaching time.

### CONCLUSIONS OF LAW

1. By giving clock hour classes to real estate professionals, either free or below their respective fair market value, FATCO violated WAC 284-30-800.

2. RCW 48.05.185 authorizes the Insurance Commissioner to impose a fine in lieu of or in addition to suspension or revocation of a company's license for a violation of RCW 48.05.185 and authorizes the Insurance Commissioner to impose a fine in lieu of or in addition to suspension or revocation of a company's license for a violation of the Insurance Code.

### CONSENT TO ORDER

NOW, THEREFORE, FATCO consents to the following Order in consideration of its desire to resolve this matter without further administrative or judicial proceedings and in order to avoid the costs and uncertainties of litigation, and the Insurance Commissioner consents to settle the matter in consideration of FATCO's payment of a fine and such other terms and conditions as are set forth below:

1. FATCO consents to the entry of this Order, and waives further administrative or judicial challenge to the OIC's actions in regard to the entry and enforcement of the Order;

2. Within thirty days of the entry of this Order, FATCO agrees to pay to the OIC a fine in the amount of \$10,000, \$7,500 of which is suspended pending no further violation of the statutes and regulations that are the subject of this Order;

3. FATCO will carry out and fulfill the requirements of the Compliance Plan which is attached hereto for a period of two years;

4. The OIC will not impose the balance of this fine nor take action against the certificate of authority of FATCO should it commit isolated, de minimis violations of the statutes or regulations that are the subject of this Order during the suspense period, as determined by the OIC. FATCO commits to rectifying such violations promptly once they are discovered;

CONSENT ORDER 2

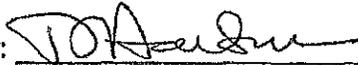
Page 2 of 4

5. Whether further violations of the statutes and regulations that are the subject of this Order, and whether they are isolated or de minimis, will be determined within the sole discretion of the OIC. FATCO understands and agrees that any future failure to comply with the statutes and regulations that are the subject of this Order constitutes grounds for further penalties that may be imposed in direct response to that further violation, in addition to the imposition of the suspended portion of the fine;

6. The suspended portion of this fine will be imposed at the sole discretion of the OIC, according to the conditions set forth above, without any right to advance notice, hearing, or appeal. Failure to pay the unsuspended portion of the fine as set forth above shall constitute grounds for revocation of FATCO's certificate of authority.

EXECUTED this 21<sup>st</sup> day of June, 2007.

FIRST AMERICAN TITLE  
INSURANCE COMPANY

By: 

Typed Name: Douglas S. Hartman

Typed Corporate Title: VICE PRESIDENT

### ORDER OF THE INSURANCE COMMISSIONER

NOW, THEREFORE, pursuant to the foregoing Findings of Fact, Conclusions of Law, and Consent to Order, the Insurance Commissioner hereby orders as follows:

1. First American Title Insurance Company is ordered to pay a fine in the amount of \$10,000, \$7,500 of which is suspended pending compliance with the statutes and regulations that are the subject of this Order for a period of two years.
2. The Company will abide by the terms and conditions of the Compliance Plan attached to and made a part hereof for a period of two years.
3. The Company's failure to pay the unsuspended portion of the fine within thirty days of the entry of this Order shall result in the revocation of the Company's certificate of authority and in the recovery of the fine through a civil action brought on behalf of the Insurance Commissioner by the Attorney General of the State of Washington.
4. This Consent Order is for settlement purposes, and the fact of, and any provision, finding, or conclusion contained in this Consent Order (or its attachment), and any action taken hereunder: (a) are not intended to be, and shall not be construed as, or be admissible in evidence as, any admission of any fact or legal principle in the action now

CONSENT ORDER 3

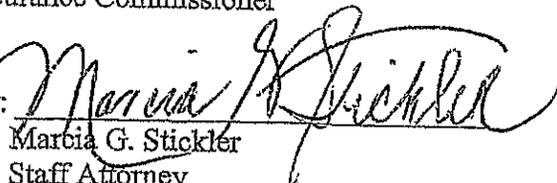
Page 3 of 4

pending in the Western District of Washington titled *Blaylock et al. v. First American Title, et al.*, (No. 06—1667 JLR) and any progeny thereof; and (b) do not, and are not intended to, determine any factual or legal issues or have any preclusive or collateral estoppel effects in regard to *Blaylock* or its progeny.

ENTERED AT TUMWATER, WASHINGTON, this 25<sup>th</sup> day of June, 2007.

MIKE KREIDLER,  
Insurance Commissioner

By:

  
Marcia G. Stickler  
Staff Attorney  
Legal Affairs Division

## COMPLIANCE PLAN

### A. Purpose of and Consideration for the Plan

First American Title Insurance Company (FATCO) enters into this Compliance Plan with the Office of Insurance Commissioner ("OIC") for the State of Washington to promote compliance by the Company with the requirements of the laws and regulations of the State of Washington. FATCO is also entering into a Consent Order No. D07-154 with the OIC. This Plan is attached to the Consent Order and is fully incorporated into said Consent Order, and FATCO's obligations under this Compliance Plan are made a part of the Consent Order and constitute obligations under said Consent Order as though this Compliance Plan and the Company's obligations under it were fully set forth in said Consent Order.

### B. Term of Plan

The effective date of this Plan shall be the date of entry of the Consent Order, on which date this Plan shall become final and binding. FATCO's obligations under this Compliance Plan shall continue from its effective date until termination of the period during which conditions are imposed by the Consent Order.

### C. Compliance Plan

#### 1. Internal Audit

- a. **Information to OIC:** The Company will conduct four semi-annual internal audits, the first to be performed within sixty (60) days of the entry of the Consent Order. Every six (6) months thereafter the Company will perform a follow up audit. The Company will establish an audit plan and take corrective action with regard to the violations included in the Consent Order. Copies of each internal audit report on the semi-annual audits to be performed during the period of this Plan shall be provided to Christine Tribe of the OIC Legal Affairs Division within thirty (30) days of the report being issued. Reports shall be issued no later than thirty (30) days following the completion of each audit.
- b. **Internal Audit Obligations:** FATCO will provide its staff conducting the audit with the Consent Order and shall focus the audit on clock hour classes in the semi-annual audits conducted pursuant to this Compliance Plan.
- c. **Audit Scope:** Each semi-annual audit shall encompass all clock hour classes offered during the six (6) month period covered by the audit.
- d. **Correction of Exceptions:** Any exception or deficiency identified by the internal audits conducted pursuant to this Plan shall be corrected. FATCO agrees to advise

the OIC within thirty (30) days of the audit report of any corrective measures contemplated to address any such exceptions or deficiencies or any other areas requiring correction. The OIC shall then review these measure(s) and notify FATCO of any comments associated thereto within thirty (30) days. Unless the OIC requests modifications to the proposed corrective measure(s), FATCO shall have thirty (30) days from the end of the OIC's review period to implement the measure(s). However, should FATCO need longer than thirty (30) days to correct any exception or deficiency, it may contact the OIC Legal Affairs Division and request an extension to the thirty (30) day requirement.

D. Miscellaneous

1. Authority to Enter Plan: FATCO gives express assurance that under applicable laws, regulations and where applicable, its Articles and By-Laws, it has the authority to comply fully with the terms and conditions of this Plan, and that it will provide written notification to the other parties within ten (10) days of any material change to this authority or of any violation of this Plan.

FIRST AMERICAN TITLE INSURANCE COMPANY

BY:

T. O. Anderson

TITLE:

VICE PRESIDENT

DATE:

6/21/07



OFFICE OF  
INSURANCE COMMISSIONER

IN THE MATTER OF

CHICAGO TITLE INSURANCE  
COMPANY,

Respondent.

ORDER NO. 11-0150

CONSENT ORDER  
LEVYING A FINE

The Insurance Commissioner of the State of Washington, pursuant to the authority set forth in RCW 48.05.185, having reviewed the official records and files of the Office of the Insurance Commissioner ("OIC"), makes the following:

**FINDINGS OF FACT:**

1. Chicago Title Insurance Company, ("Chicago Title" or "the Company") is an authorized insurer domiciled in Nebraska. Chicago Title issues title insurance.
2. On three occasions in 2010, Chicago Title gave a class titled "Distressed Properties in Washington" to a total of fifty-seven real estate licensees, without charging the licensees a fee. The class included a one-hour block on short sales.
3. As part of the materials given to attendees at the class, Chicago Title provided a "Short Sale Resource List" that advertised the names of six attorneys with their contact information.

**CONCLUSIONS OF LAW:**

1. By advertising with six producers of title insurance business, Chicago Title violated WAC 284-29-215(2).
2. By conducting an educational seminar not restricted to title insurance, title to real property, and escrow topics without charge to producers, Chicago Title violated WAC 284-29-235.
3. RCW 48.05.185 authorizes the Insurance Commissioner to impose a fine in lieu of the suspension or revocation of a company's license or certificate of authority.

**CONSENT TO ORDER:**

Chicago Title, acknowledging its duty to comply fully with the applicable laws of the State of Washington, consents to the following in consideration of its desire to resolve this matter without further administrative or judicial proceedings. The Insurance Commissioner consents to settle the matter in consideration of the Company's payment of a fine on such terms and conditions as are set forth below.

1. Chicago Title consents to the entry of this Order, waives any and all hearing rights, and further administrative or judicial challenges to this Order.

2. By agreement of the parties, the Insurance Commissioner will impose a fine of \$15,000.00 (Fifteen Thousand Dollars), with \$5,000.00 (Five Thousand Dollars) of that suspended on the following conditions:

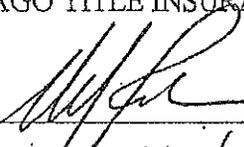
A. The Company will commit no further violations of the regulations that are the subject of this Order for a period of two years from the date this Order is entered;

B. The Company shall pay \$10,000.00 within thirty days of entry of this Order.

3. The Company's failure to timely pay the fine and to adhere to the conditions shall constitute grounds for suspension and/or revocation of the Company's certificate of authority and shall result in the recovery of the entire fine, including both the suspended and unsuspended amounts, through a civil action brought on behalf of the Insurance Commissioner by the Attorney General of the State of Washington.

EXECUTED this 10<sup>th</sup> day of August, 2011.

CHICAGO TITLE INSURANCE COMPANY

By: 

Printed Name: Michael J. Rich

Corporate Title: Vice President

**ORDER**

Pursuant to the foregoing Findings of Fact, Conclusions of Law, and Consent to Order, the Insurance Commissioner hereby Orders as follows:

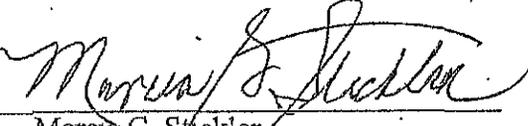
1. Chicago Title Insurance Company is ordered to pay a fine in the amount of \$15,000 of which amount the sum of \$5,000 is suspended for two years from the date of entry of this Order on the conditions that (1) the Company commits no further violations of the regulations that are the subject of this Order for the next two years; (2) the Company pay \$10,000 within thirty days of the entry of this Order.

2. The Company's failure to timely pay the fine or to adhere to the conditions set forth above shall constitute grounds for suspension and/or revocation of the Company's certificate of authority and shall result in the recovery of the entire fine, including both the suspended and unsuspended amounts, through a civil action brought on behalf of the Insurance Commissioner by the Attorney General of the State of Washington.

ENTERED AT TUMWATER, WASHINGTON, this 15<sup>th</sup> day of August, 2011.

MIKE KREIDLER  
Insurance Commissioner

By: \_\_\_\_\_

  
Marcia G. Stickler  
Staff Attorney  
Legal Affairs Division



FILED

OFFICE OF  
INSURANCE COMMISSIONER

2013 MAY -6 A 10:55

IN THE MATTER OF

) NO. 13-0021

Heatings Unit, DIC  
Patsia D. Petersen  
Chief Hearing Officer

) STIPULATION AND AGREED

) ORDER DISMISSING ADJUDICATIVE

FIRST AMERICAN TITLE  
INSURANCE COMPANY,

) PROCEEDINGS

)

)

)

An Authorized Insurer.

)

STIPULATION

Pursuant to RCW 34.05.060 and WAC 10.08.230(2)(b), the Office of Insurance Commissioner ("OIC"), by and through its designated representative, Marcia Stickler, and First American Title Insurance Company ("FATIC" or "the Company"), by and through its undersigned representatives and its counsel, Jerry Kindinger, hereby stipulate and agree to resolve this matter as follows:

1. FATIC is a title insurer authorized to do business in the State of Washington.

2. On fifty-three (53) occasions in 2011 and on forty-five (45) occasions in 2012, FATIC gave three hour Department of Licensing-approved clock hour class #C7643, titled "Distressed Properties: Title & Escrow Issues" to hundreds of licensed producers of title insurance business without charging the licensees a fee. The OIC believes that the class provided education beyond solely the topics of title insurance, escrow, and title to real property and therefore should not have been provided to producers without charge. The Company disagrees.

3. On October 3, 2011, FATIC gave the same three credit clock hour class at the Seattle-King County Association of Realtors, a trade association. The classroom seated sixty-two (62) students and was billed as being "sold out." The class was given without charge, and the OIC believes that the estimated benefit conferred on the trade association and attendees, presuming even a below market rate of \$30 per student, was \$1,860. The Company disagrees. In addition, FATIC made a donation to the trade association of \$500.00 in cash and \$179.70 for snacks and beverages.

4. On fifty-six (56) occasions in 2011, and on sixteen (16) occasions in 2012, FATIC gave three hour Department of Licensing-approved clock hour class #C7052

titled "Foreclosures and Title to Real Property" to hundreds of licensed producers of title insurance business without charging the licensees a fee. The OIC believes that the class provided education beyond solely the topics of title insurance, escrow, and title to real property and therefore should not have been provided to producers without charge. The Company disagrees.

5. On or about January 18, 2013, the OIC offered FATIC Consent Order No. 13-0021 to settle the matter, imposing a fine upon FATIC for violations of WAC 284-29-235 and WAC 284-29-220. When FATIC declined to agree to the Consent Order, the OIC issued a Notice of Hearing on or about March 14, 2013. The hearing is scheduled for July 8, 2013. The OIC believes that the clock hour classes given to producers of title insurance business without charge violated WAC 284-29-235. The OIC further believes that the benefit FATIC conferred upon the trade association on October 3, 2012 violated WAC 284-29-220. The Company disagrees.

6. In order to fully resolve the pending proceeding between the OIC and FATIC without further administrative or judicial proceedings, and in order to avoid the costs and uncertainties of litigation, the parties agree to fully settle this matter as follows:

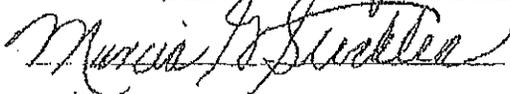
6a. FATIC agrees to pay \$25,000 within thirty days of the date of the entry of the subjoined Order.

6b. The parties agree that this Stipulation and Agreed Order are intended to fully resolve all issues regarding FATIC related to the OIC's Notice of Hearing and arising under the Washington insurance code statutes and regulations governing educational seminars and trade association events put on by title insurance companies as of the date of entry of the Order.

6c. This Stipulation is for settlement purposes only, and the fact of, and any provision, finding, or conclusion contained in this Stipulation or the subjoined Order, and any action taken hereunder does not constitute and shall not be construed to constitute, or be admissible in evidence as, any admission of liability by FATIC.

The parties agree that the subjoined Order may be entered forthwith and without further notice.

Dated this 16<sup>th</sup> day of April, 2013.



Marcia G. Stickler

Dated this 25<sup>th</sup> day of APRIL, 2013.

First American Title Insurance Company

By: [Signature]

Title: SVP, Deputy General Counsel

**ORDER**

This matter having come on before the undersigned Chief Hearing Officer of the State of Washington Office of Insurance Commissioner pursuant to the foregoing Stipulation and the Chief Hearing Officer having reviewed said Stipulation and deeming herself fully advised in the premises, NOW THEREFORE,

IT IS HEREBY ORDERED as follows:

1. First American Title Insurance Company is ordered to pay \$25,000 within thirty days of the date of the entry of this Order.
2. OIC Docket Number 13-0021 is hereby closed and dismissed as settled.

SIGNED AND ENTERED this 6<sup>th</sup> day of May, 2013

[Signature]  
PATRICIA D. PETERSEN  
Chief Hearing Officer  
Office of Insurance Commissioner

Presented by:

[Signature]  
Marcha G. Stickler  
OIC Staff Attorney

Approved for Entry/Notice  
of Presentation Waived:

[Signature]  
Ryan, Swanson & Cleveland, PLLC  
Jerry Kindinger  
Attorneys for First American Title  
Insurance Company



FILED

OFFICE OF  
INSURANCE COMMISSIONER  
HEARINGS UNIT

2013 DEC 13 P 4: 35

Fax: (360) 664-2782

Patricia D. Petersen  
Chief Hearing Officer  
(360) 725-7105

Hearings Unit, DIC  
Patricia D. Petersen  
Christina Kelly Ar-Gairns  
Paralegal  
(360) 725-7002  
[KellyC@oic.wa.gov](mailto:KellyC@oic.wa.gov)

BEFORE THE STATE OF WASHINGTON  
OFFICE OF INSURANCE COMMISSIONER

In the Matter of:	)	No. 11-0106
	)	
STEWART TITLE GUARANTY	)	FINDINGS OF FACT,
COMPANY,	)	CONCLUSIONS OF LAW
	)	AND FINAL ORDER
	)	
An Authorized Title Insurer.	)	
_____	)	

**TO:** Stephen J. Sirianni, Esq.  
Sirianni Youtz Spoonmore  
999 Third Avenue, Suite 3650  
Seattle, Washington 98104

**COPY TO:** Mike Kreidler, Insurance Commissioner  
James T. Odiorne, J.D., CPA, Chief Deputy Insurance Commissioner  
AnnaLisa Gellermann, Esq., Deputy Commissioner, Legal Affairs Division  
Marcia Stickler, Esq., Staff Attorney, Legal Affairs Division  
William R. Michels, Deputy Commissioner, Company Supervision  
Office of the Insurance Commissioner  
PO Box 40255  
Olympia, WA 98504-0255

Pursuant to RCW 34.05.434, 34.05.461, 48.04.010 and WAC 10-08-210, and after notice to all interested parties and persons the above-entitled matter came on regularly for hearing before the Washington State Insurance Commissioner commencing at 10:00 a.m. on November 15, 2011. All persons to be affected by the above-entitled matter were given the right to be present at such hearing during the giving of testimony, and had reasonable opportunity to inspect all documentary evidence. The Insurance Commissioner appeared pro se, by and through Marcia Stickler, Esq., Staff Attorney in his Legal Affairs Division. Stewart Title Guaranty Company



was represented by its attorney Stephen J. Sirianni, Esq. of Sirianni Youtz Spoonmore. By agreement of the parties, the Final Order in this proceeding was delayed until 1) *Chicago Title Insurance Company v. Washington State Office of the Insurance Commissioner*, No. 87215-5 (August 1, 2013) was heard and decided by the Washington State Supreme Court; and 2) the parties were allowed to submit briefs, responses and reply briefs after entry of the decision in *Chicago Title* regarding whether or not that decision was binding on the decision herein.

### NATURE OF PROCEEDING

The purpose of the hearing was to take testimony and evidence and hear arguments as to whether the OIC can impose sanctions against Stewart Title Guaranty Company for violations of WAC 284-29-215(2) (illegal inducements in title insurance) committed by Rainier Title, LLC, while Rainier was working as a title insurance agent on behalf of Stewart in King, Snohomish and Pierce Counties. On June 1, 2011, the Washington State Insurance Commissioner issued a Notice of Hearing in this matter, asking the undersigned to consider the allegations and the sanctions to be imposed upon Stewart Title Guaranty Company pursuant to RCW 48.04.010 and 48.05.185. By mutual request of both the Insurance Commissioner and Stewart, the undersigned waited to enter her Final Order herein until the Washington State Supreme Court had entered its decision in *Chicago Title Insurance Company v. Washington State Office of the Insurance Commissioner*, No. 87215-5 (August 1, 2013); and 2) until, following entry of the Supreme Court's decision, the parties had had the opportunity to file written arguments for her consideration concerning whether or not the Supreme Court's decision in *Chicago Title* was binding on the decision in this matter.

### EARLIER SUMMARY JUDGMENT ORDER

On August 24, 2011, the OIC filed a Motion for Summary Judgment, wherein the Washington State Insurance Commissioner asked the undersigned to determine as a matter of law that as the appointing insurer, Stewart Title Guaranty Company is liable for the regulatory violations of its duly appointed agent, Rainier Title Company, LLC, and that as a result a fine should be imposed on Stewart in accordance with RCW 48.05.185. On September 14, Stewart filed its Cross-Motion for Summary Judgment, asking the undersigned to determine as a matter of law that regardless of whether Rainier committed any violations, Stewart is not responsible for those violations and summary judgment should be entered in Stewart's favor dismissing this matter. On October 24, the undersigned entered her Order on the Insurance Commissioner's Motion for Summary Judgment and Stewart's Cross-Motion for Summary Judgment. This Order included the final decisions on both parties' Motions for Summary Judgment, and determined that there were no genuine issues of material fact that Rainier, a duly appointed title insurance agent of Stewart, advertised on behalf of, for, or with Nest Financial, LLC, a mortgage loan broker. However, summary judgment was not granted on the issue of Stewart's liability for Rainier's actions because 1) on summary judgment it could not be determined as a matter of law whether, by entering into their existing Title Insurance Underwriting Agreement, Stewart and Rainier are legally able not only (a) to define their rights and privileges between themselves but also (b) to limit the authority of the Insurance Commissioner to the extent that the Insurance Commissioner

cannot hold Stewart liable for the acts of Rainier. Also, 2) the parties differed on the factual question of whether during the pertinent period Rainier represented Stewart exclusively or not, which might be relevant in deciding whether - even though Rainier's advertisement does not mention Stewart specifically - if Rainier sold Stewart's policies "exclusively" then Stewart is liable for Rainier's acts. [This factual question was subsequently resolved by Stewart which advised that, contrary to its previous Declaration, during the pertinent period Rainier did represent Stewart exclusively and this fact is set forth in Finding of Fact No. 6 below.]

### FINDINGS OF FACT

Having considered the evidence and arguments presented at the hearing, and the documents on file herein, the undersigned presiding officer designated to hear and determine this matter finds as follows:

1. The hearing was duly and properly convened and all substantive and procedural requirements under the laws of the state of Washington have been satisfied. This Order is entered pursuant to Title 48 RCW; Title 34 RCW; and regulations applicable thereto.
2. Stewart Title Guaranty Company ("Stewart") is a publicly traded Texas domestic title insurer which is licensed to enter into contracts of title insurance ("title insurance policies," "title policies" or "title insurance contracts") in 49 states including Washington, [Declaration of Mark Pillette, Stewart's Agency Services Division Manager.]
3. It is undisputed that, in Washington and elsewhere, in order to solicit and/or sell title insurance policies of a title insurance company ("title insurer"), an entity 1) must be licensed by the Washington State Insurance Commissioner ("OIC") as a "title insurance agent" under RCW 48.17.060; and 2) must be appointed by a title insurance company to act on its behalf under RCW 48.17.160. [OIC Motion for Summary Judgment.]
4. Nationally, Stewart has two ways that it solicits consumers to purchase Stewart's title insurance policies:
  - 1) Stewart solicits and sells Stewart policies directly to consumers from its own offices, issuing its policies directly to consumers. Stewart hires its own staff for these "direct service" offices which handle the entire process from solicitation and negotiation to actual sales of Stewart policies. In Washington, Stewart operates its "direct service" offices in 14 counties, where it hires its own staff and conducts its own marketing and sales efforts to support sales of its title policies. [Declaration of Pillette.]
  - 2) Stewart also appoints title insurance agents to, it argues, just "sell" Stewart policies to consumers. In Washington, Stewart has appointed 18 title insurance agents located in 18 counties. [Declaration of Pillette.] However, instead of calling these title insurance agents "title insurance agents" or even "agents," which is their only correct identification, Stewart consistently calls them "Underwritten Title Companies" or "UTCs" which are misleading to consumers and others. In fact, just as with any other

agents, these "UTCs" are not licensed to insure title or any other risks and there is not, and has never been, any such license, designation or other type of authorization of any kind called an "Underwritten Title Company" or "UTC" -- or even mention of such an entity -- in the Insurance Code or even informally in the OIC's practices and procedures which allows an "Underwritten Title Company" or "UTC" to conduct any title insurance business either on behalf of an insurer or somehow independently. The only way an entity can engage in activities involved in selling title insurance is in its capacity as a licensed and appointed title insurance agent. [OIC Motion.] Although it is of little consequence to the decision herein, there is insufficient evidence to support Stewart's argument that in its private Title Insurance Underwriting Agreement between itself and Rainier (see Finding of Fact No. 6 below) it only authorized Rainier to "sell" its Stewart policies and did not authorize Rainier to do anything else. Indeed, in its Agreement with Stewart, Rainier also agrees to *conduct its business in a sound and ethical manner and shall issue title policies according to ... the rules and instructions given by [Stewart]...* Likewise, Stewart, as the title insurer and acknowledged underwriter of its title policies agrees to *Furnish Rainier ... with rules and instructions involving matters of importance to the business of title insurance. Promptly determine questions submitted by Rainier regarding the issuance of [Stewart's] title policies.* Further, the parties agree that *Stewart shall defend at its own expense and pay all losses under its title policies ....* [Emphasis added.] [Title Insurance Underwriting Agreement, Ex. A to Declaration of Pillette.]

5. It is undisputed that during all times pertinent hereto, Rainier Title, LLC ("Rainier") was a properly licensed title insurance agency under RCW 48.17.060. It is also undisputed that on or about December 17, 2008, Stewart properly appointed Rainier to act as a title insurance agent on Stewart's behalf under RCW 48.17.160, and has so been appointed continuously since that date. [OIC Motion, Ex. 1.]

6. On December 3, 2008, Stewart and Rainier entered into a "Title Insurance Underwriting Agreement." [Declaration of Pillette, Ex. A, Title Insurance Underwriting Agreement ("Agreement").] Elsewhere, agreements between an insurer and its appointed agent are normally called "Agency Agreements." Although this Agreement was technically not exclusive, during the pertinent times the only appointment Rainier had from any insurer was its appointment to act as an agent on behalf of Stewart. Therefore, contrary to Stewart's Declaration, it is now undisputed that during the pertinent period 100% of the policies Rainier sold in King, Snohomish and Pierce Counties were Stewart's title policies. [Stewart Letter to the undersigned filed November 1, 2011.] In addition, once again, although the Agreement was technically not exclusive, the only title agent Stewart had appointed in King, Snohomish and Pierce Counties was Rainier. (While not relevant to the decision herein, Stewart's undisputed Declaration stated that it does contract with two other title agents in Pierce County but there is insufficient evidence to conclude that any Stewart policies were sold through these agents during the pertinent period.) Therefore, Rainier only represented Stewart in these counties, and Stewart sold its policies only through its direct offices and through Rainier in these counties [Declaration of Pillette; Stewart Letter dated November 1, 2011.] This Agreement was entered into, and the activities of Rainier acting as an agent on behalf of Stewart, were done for the mutual benefit of both Stewart and Rainier.

7. In King, Snohomish and Pierce Counties, Rainier, as a title agent acting on behalf of only Stewart, is the interface between Stewart and potential buyers of Stewart policies. In its attempt to sell Stewart title policies, Rainier is involved from initial solicitation (to both potential consumers and third parties who can guide potential consumers to purchase Stewart title policies) to sale of the Stewart title policies. To the mutual benefit of both Stewart and Rainier, Rainier conducts the following activities involved in the sales of Stewart title policies:

- Advertises and markets Stewart's policies to the public;
- Explains Stewart's policies to consumers and advises them as to what these policies cover and do not cover;
- Answers any other questions consumers may have about Stewart's policies;
- Quotes the costs for Stewart's policies to consumers (in accordance with rates which Stewart as the title insurer is required to have filed with the OIC prior to use);
- Collects the proper premium funds from the consumer purchasing Stewart's policies;
- Perhaps researches and prepares the actual policies for issuance by Stewart to the consumer; and
- Fills in the appropriate information on title policy, binder, commitment and endorsement forms specifically furnished to Rainier by Stewart for this purpose.

While Stewart and Rainier seem to loosely refer to the term "issue" as meaning preparing and delivering the title policy to the consumer, in fact the title policy is only issued by Stewart. The policy is not actually "issued" by Rainier. The two parties to the title insurance contract are Stewart and the covered person(s). Stewart's agent, Rainier, is not a party to the insurance contract: should there be a covered impediment in the title to the subject property in a real estate transaction, it is the insurer, Stewart (not Rainier) which is responsible to provide the defense and/or other coverage promised in the title policy to the named covered persons (i.e., the purchasers of land and/or lender) who are the other party to the title contract. In order to be effective, the policy must bear the signatures of authorized officers of Stewart (which may be preprinted on the forms Stewart provides to Rainier) which binds Stewart to the title insurance contract. (In Stewart's discretion, the policy may require a "countersignature" of another individual, e.g., an officer of Rainier, in order to become effective, but it is Stewart who as the issuer -- i.e., the title insurer, and one of the two parties to the insurance contract -- is required to execute the policy. While Stewart's agent, Rainier, on Stewart's behalf, might actually stamp the policy with Stewart's signature as the title insurer issuing the Stewart policy, and might take other actions to prepare, collect premium funds for, and deliver the policy, Stewart's agent, Rainier, is still neither a party to the contract nor a principal. Stewart's agent, Rainier, is authorized to conduct these activities only because Stewart has appointed Rainier to act on Stewart's behalf as a title agent.

8. It is undisputed by the parties, and Rainier has admitted [OIC Motion, Ex. 2], that between on or about March 20, 2009 and July 1, 2010, Rainier published material on its website, [www.rainiertitle.com](http://www.rainiertitle.com). After a review of this published material, it is here found that this material constituted representations about a product or any person who sells or otherwise makes available such a product when the representation invites, or otherwise solicits a person to inquire about or purchase such a product. While the advertising did not mention Stewart specifically,

the advertising was part of Rainier's larger goal of selling, soliciting or negotiating title insurance policies as it was authorized to do under RCW 48.17.010(15).<sup>1</sup> For example, the subject advertising stated that Rainier was "honored to be selected as the preferred provider of title and escrow services by Nest Financial, ...", and because Rainier was only appointed to sell Stewart title policies and not those of any other title insurer (and indeed as above it is agreed that 100% of the policies Rainier sold during this period were Stewart's policies), any advertising for Rainier's services was, in effect, Rainier's solicitation for Stewart's title insurance policies. [Additionally, it was undisputed that Rainier's escrow services during the period were never performed in a transaction without also an accompanying Stewart policy.] While Stewart's arguments have been carefully considered, it cannot be found that Rainier was only advertising for its own escrow or other non-title services; Rainier was also advertising for the sale of Stewart policies. Rather, for the above reasons, in the advertising activities which are the subject of the OIC's disciplinary action herein, it is here found that Rainier, as a duly appointed title insurance agent acting on behalf of Stewart, was advertising for the sale of Stewart's title insurance policies.

9. It is undisputed that Rainier published the subject advertising with and on behalf of Nest Financial, LLC, a mortgage broker. Contrary to Stewart's argument that Nest Financial, LLC, was not in a position to create title insurance business for Rainier and Stewart, the weight of the evidence is that in its activities as a mortgage broker Nest Financial, LLC, is indeed in a position to create title insurance business for both 1) Rainier, as the agent for Stewart, who is soliciting for the sale of Stewart's title insurance policies, and 2) Stewart, which is the issuer and underwriter of Stewart title policies.

10. At the request of both the OIC and Stewart, the undersigned waited to consider her decision and enter a final order in this matter until 1) the Washington State Supreme Court ("Supreme Court") had heard and decided *Chicago Title Insurance Company v. Washington State Office of the Insurance Commissioner*, No. 87215-5 ("*Chicago Title*"); and 2) the parties were allowed to submit briefs, responses and reply briefs after entry of the Supreme Court's decision in *Chicago Title* regarding whether or not the facts in this matter and in *Chicago Title* are sufficiently different to dictate a different decision than that reached by the Supreme Court in *Chicago Title*. For this reason, after the Supreme Court entered its decision in *Chicago Title* on August 1, 2013, Stewart filed its Stewart Title Guaranty Company's Supplemental Memorandum Regarding the Supreme Court's Decision, and the OIC filed its OIC Response to Stewart Title's Supplemental Memorandum. Thereafter, Stewart filed its Reply Regarding the Supreme Court's Decision. The undersigned has now considered those post-hearing briefs, including case law and other authorities cited therein, and the entire hearing file and - although this consideration includes to some extent an evaluation of facts as well - has included her consideration of the impact of the Supreme Court's decision in *Chicago Title* in the Conclusions of Law section below.

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<sup>1</sup> RCW 48.17.010 was subsequently amended in 2010 and the relevant provision is now found in RCW 48.17.010(16).

## CONCLUSIONS OF LAW

Based upon the above Findings of Facts, it is hereby concluded,

1. Pursuant to Title 48 RCW, the OIC is authorized to regulate the business of insurance and enforce the insurance laws of Washington State in order to protect the public. Further, pursuant to Title 48 RCW and particularly 48.04 RCW, the OIC has jurisdiction over this matter, and has properly delegated to the undersigned the responsibility to conduct these proceedings and to enter the final decision herein.
2. At all times pertinent hereto, Stewart was properly authorized by the OIC, under Title 48 RCW, to transact title insurance business as a foreign title insurer in Washington State. Further, Stewart, as an authorized insurer, is subject to Title 48 RCW, the Insurance Code of Washington, and Chapter 284 WAC, the regulations implementing the Insurance Code.
3. Prior to December 17, 2008, Rainier properly applied to the OIC for, and the OIC granted, a license to Rainier to act as a title insurance agent in Washington as required by and under the terms and conditions of RCW 48.17.170. Further, on or about December 17, 2008, as permitted by RCW 48.17.160, Stewart properly requested, and the OIC approved, Stewart's appointment of Rainier to act as a title insurance agent on Stewart's behalf under the terms and conditions of RCW 48.17.160.
4. RCW 48.29.210 provides:
  - (1) a title insurer, title insurance agent, ... shall not, directly or indirectly, give any fee, kickback, or other thing of value to any person as an inducement ... for placing business, referring business, or causing title insurance business to be given to either the title insurer, or title insurance agent, or both.
  - (2) A title insurer, title insurance agent, ... shall not, directly or indirectly, give anything of value to any person in a position to refer or influence the referral of title insurance business to either the title insurance company or title insurance agent, or both, ... except as permitted under rules adopted by the commissioner.

In implementation of this statute, the OIC adopted WAC 284-29-200 through -265. While just seven sections of Chapter 284-29 WAC are devoted to other aspects of title insurance business, a full 14 sections of this title are devoted to implementation of RCW 48.29.210. WAC 284-29-200, which sets forth standards for acceptable giving of things of value by a title insurer or agent to any person in a position to refer or influence the referral of title business to the title insurer, provides, in pertinent part:

RCW 48.29.210 is the rule governing the giving of things of value in the title insurance business. As specifically relevant herein, WAC 284-29-215(2) provides that: *(2)... a title company must not directly, indirectly, by payment to a third party or otherwise, use any means of communication or media to advertise on behalf of, for or with a producer ....* [Emphasis added.]

- For purposes of WAC 284-29-215(2), 284-29-205(13) defines "title company" as either a title insurance company authorized to conduct title insurance business in this state under chapter 48.05 RCW or a title insurance agent defined in RCW 48.17.010(15), or both. It is undisputed and is hereby concluded that both Stewart and Rainier are "title companies" within the meaning of WAC 284-29-215(2). It is also undisputed that "advertising" is one activity involved in "solicitation" as it has been broadly defined by the Supreme Court and longstanding case law.

- For purposes of WAC 284-29-215(2), WAC 284-29-205 defines "producer of title insurance business" and "producer" as specifically including "mortgage loan brokers" [incorporated by reference to RCW 48.29.010(3)(e)] and any person in a position to refer or influence the referral of title business to the title company. As found above, Nest Financial, LLC is a mortgage broker, and therefore comes within the definition of "producer" and "producer of title insurance business" within the meaning of WAC 284-29-215(2). Further, it is undisputed that Rainier and Nest Financial, LLC, conducted this advertising together. Therefore, their activities constituted "advertising ... with a producer," within the meaning of WAC 284-29-215(2).

- For purposes of WAC 284-29-215(2), WAC 284-29-205(1) defines "advertising" as a representation about any product, service, ... or any person who makes, ... sells, or otherwise makes available such a product, ... when the representation: ... (c) Invites, advises, recommends, or otherwise solicits a person to participate in, inquire about, purchase, ... such a product, .... As found above, the material which Rainier and Nest Financial, LLC published on Rainier's website constituted advertising by a title company for and with a producer of title business. As above, while the advertisement may not specifically identify Stewart, during all pertinent times Rainier was only authorized to sell - and only sold - Stewart's title policies. Therefore, it is hereby concluded that the subject material published by Rainier with Nest Financial, LLC, on Rainier's website constituted "advertising" on behalf of Stewart within the meaning of WAC 284-29-215(2).

Therefore, it is hereby concluded, and Rainier has admitted, that the subject advertisement published by Rainier and Nest Financial, LLC, from on or about March 20, 2009 until on or about July 1, 2010, constituted *advertising by a title company with a producer of title business*, in violation of WAC 284-29-215(2). [OIC's Motion, Ex. 2.]

Statutory Argument re Stewart's vicarious liability for acts of its agent.

5. The OIC argues that because Rainier was a duly authorized title insurance agent of Stewart, authorized under RCW 48.17.010(16) to *sell, solicit, or negotiate insurance on behalf of the title insurance company* [Stewart], Stewart is liable for Rainier's above stated violations of WAC 284-29-215(2) in its advertising for Stewart's title policies. The OIC asserts that it is the terms of the Insurance Code itself, and not just under the common law of principal-agent, which determines the rights and responsibilities of principal and agent in the insurance context, citing relevant cases which hold that the principal insurer is bound by the acts of its duly appointed agents because, they maintain, the Insurance Code expressly provides who shall be the insurers

and who shall be the agents, and was written to clearly define those activities which the appointed agent can perform in acting on behalf of its appointing insurer.

6. In opposition to the OIC, however, Stewart argues that there is no statutory authority which allows the OIC to hold the title insurer liable for the "independent acts" of an agent – that by merely appointing a title insurance agent the title insurer does not automatically become responsible for every regulatory violation of that agent. [Stewart's Cross-Motion for Summary Judgment, pgs. 11-13; Stewart's Reply, pgs. 3-4.] Further, Stewart argues, the statute does not make the underwriter *per se* liable for the regulatory violations of its agent, that liability can arise only through a consideration of common law agency principles: if an agent's acts are within the scope of its agency with its principal, Stewart argues, the principal may be liable for the agent's violations but if the agent's actions are outside the scope of the agency then the principal has no vicarious liability.

7. Stewart points out, correctly, that at the time the violations of WAC 284-29-215(2) occurred in *Chicago Title*, RCW 48.17.010 read as follows:

*"Agent" means any person appointed by an insurer to solicit applications for insurance on its behalf. ...* [Emphasis added.]

Stewart further points out, correctly, that by the time the violations of WAC 284-29-215(2) occurred in this case, RCW 48.17.010 had been amended (the relevant portion being RCW 48.17.010 (15)) to read:

*(15) "Title insurance agent" means a business entity licensed under the laws of this state and appointed by an authorized title insurance company to sell, solicit, or negotiate insurance on behalf of the title insurance company.* [Emphasis added.]

Just as here, *Chicago Title* involved a private Agreement between a title insurer (Chicago) and its appointed title agent; involved Chicago's agent's marketing activities which were determined to be a violation of the illegal inducement laws; and the title insurer arguing that its private Agreement with its agent rendered it, Chicago, not liable for its agent's violations because Chicago did not give its agent the authority to "market" Chicago's policies. Here, however, Stewart argues that the Washington Supreme Court's decision in *Chicago Title* is not binding because, under RCW 48.17.010 before it was amended, a title agent's authority to "*solicit*" by definition included the authority to "market," particularly where, as in *Chicago*, Chicago's agent was its exclusive agent and Chicago did not market directly itself and therefore Chicago did not compete with its agent (in other words, if Chicago's agent did not "market" for Chicago's policies then no policies would be sold). Here, Stewart argues, because the RCW 48.17.010 was amended to define title insurance agents as entities licensed by the OIC and appointed by a title insurer to *sell, solicit, or negotiate insurance on behalf of the title insurance company*, Stewart could pick and choose whether to authorize its agent to "*solicit*" and/or to "*negotiate*" and/or to "*sell*." Stewart argues that it chose – in its private Agreement with Rainier – to only authorize Rainier to "*sell*" its policies and not to "*solicit*" or "*negotiate*" its policies (and gave up control over Rainier's advertising for Stewart's policies). [Stewart's Motion, pgs. 13-16.] Therefore,

Stewart argues, what Rainier was doing when it committed the subject violations was "soliciting" (which as discussed in Conclusion of Law No. 4 above includes marketing) which was outside the scope of its agency (as defined in its private Agreement with Rainier) and so Stewart is not liable for Rainier's violations. (While not directly relevant herein, in the private Agreement Stewart also limits its control over many of Rainier's other activities in soliciting and selling Stewart's policies; under this same theory, Stewart argues that it is also not liable for Rainier's acts in these areas either.) Stewart argues that, as to all activities relative to Stewart's title business aside from "selling" Rainier was acting as an "independent, policy-issuing agent" (which has no definition or license in the Insurance Code) for which Stewart was not responsible to the regulator. Presumably, under this same theory Rainier would not be responsible to the OIC for Rainier's violations of any other laws - although acting on behalf of Stewart, and acting for the mutual benefit of both Rainier and Stewart - so long as they did not pertain to what Stewart's private Agreement might define as "selling." Presumably also, under this same theory, Stewart would argue that it is not responsible to innocent consumers or other third parties for activities of Rainier which it chose to define as being outside strictly "selling."

8. As the OIC points out and has been found in Finding of Fact No. 4 above, there is insufficient proof that Stewart only authorized Rainier to "sell" Stewart's policies and did not authorize Stewart to "solicit" or "negotiate" these policies. However, whether or not Stewart only gave Rainier the authority, in its private Agreement, to "sell" title policies on Stewart's behalf does not affect Stewart's liability to the OIC for the acts of its agent; when the Legislature amended RCW 48.17 in 2007 (effective July 1, 2009) it deleted some portions of that statute and added many portions. One section which was affected was, as above, RCW 48.17.010, which changed the definition of a title insurance agent from one who is *appointed by an insurer to solicit applications for insurance on its behalf* (and effectuate insurance contracts and collect premiums if authorized to do so) to one who is *appointed by an authorized title insurance company to sell, solicit, or negotiate insurance on behalf of the title insurance company....* For Stewart to prevail in its argument, one must conclude, as Stewart argues, that this amendment was intended to allow insurers to pick and choose as to what activities it will allow its agents to perform: is the agent only authorized to solicit? Only authorized to negotiate? Only authorized to sell? Solicit and negotiate but not sell? Sell and solicit but not negotiate? Sell and negotiate but not solicit? Then once the insurer has decided which of these activities to authorize its agent to perform, said authorization must be included in a private agreement between the insurer and the agent. After consideration of this amendment and Stewart's argument, it cannot be concluded that the Legislature intended this to be the result. This amendment, found in Chapter 117, Laws of 2007, seems to be a large, perhaps wholesale adoption of some uniform possibly national association of insurance commissioners proposed statute which primarily concerns changing the name of "insurance agents" to "insurance producers" for all insurance agents except title insurance agents, and then changing the term "insurance agents" to "insurance producers" throughout that portion of the Insurance Code where the term "insurance agent" had previously been used along with addressing licensing procedure, and other matters. Nothing appears in the legislative history to show that the Legislature meant this change to be of any legal consequence at all. It cannot be concluded that the Legislature intended this to allow title insurers to privately pick and choose as to which of these three fairly indistinguishable, and certainly overlapping, activities they authorize their agents to perform, with the unfair result this would create. As the OIC argues (and it is noted that the OIC was a sponsor of this amendment

and due weight was given to the OIC's interpretation of this amendment) the term "solicit" was changed to "solicit, negotiate or sell" only clarified the component parts of what an insurance transaction had already generally consisted. [OIC's Response to Stewart's Supplemental Memorandum.] Finally, as the OIC argues, the attempt by Stewart to break down and carve off the scope of an appointment of a title insurance agent between "soliciting," "negotiating" and "selling" makes no sense in light of the entirety of the Supreme Court's opinion: the ability to "sell" insurance without the concurrent ability to "solicit," as broadly defined by the Court would be meaningless, would render enforcement nearly impossible and would cause harm to unsuspecting consumers and other third parties who are unaware of such technical ploys by both the title insurer and title agent, who are both – in the end – benefiting from the title insurance transaction.

Common Law Argument re Stewart's vicarious liability for acts of its agent.

9. In addition, and more importantly herein, the Supreme Court in *Chicago Title* summarized its ruling in the first paragraph of its decision as follows:

*Land Title* [Chicago's appointed agent] violated the anti-inducement laws [as here, RCW 48.29.210 and regulations]. We hold that CTIC [Chicago] is responsible for Land Title's regulatory violations, pursuant to statutory and common-law theories of agency. When the statute forbids the insurer or its agent from certain conduct, it means that the insurer may not do indirectly – through its agent – what it may not do directly. [Emphasis added.]

Thus, the Supreme Court specifically held that the title insurer was liable for the regulatory violations of its appointed title agent using both the statutory analysis discussed above and the common law theory of liability, reaffirming the applicability and result of both theories throughout its decision:

[Chicago's statutory argument] overlooks the fact that solicitation is inherently part of Land Title's authority to sell title insurance. In any event, CTIC's argument founders on our decision in *Pagni*, where we held that "an insurance company is bound by all acts, contracts, or representations of its agent, whether general or special, which are within the scope of his real or apparent authority, notwithstanding they are in violation of private instructions or limitations upon his authority, of which the person dealing with him, acting in good faith, has neither actual nor constructive knowledge". *Pagni v. N.Y. Life Ins. Co.*, 173 Wash. 322, 349-50, 23 P.2d 6 (1933) (emphasis added) (quoting 32 C.J. Sec. 140, at 1063).

The Supreme Court affirms its opinion that common law principals would render a title insurer liable for acts of its agent, independent of a statute:

*But even without the statute, CTIC would be vicariously liable at common law. When CTIC gave Land Title the authority to sell its insurance, CTIC also gave*

*Land Title implied authority to perform other acts necessary to the sale of insurance and to act in accordance with industry norms. Solicitation was necessary to effectuate Land title's authority to sell CTIC insurance under the Agreement, and violating the anti-inducement provisions was customary in the title insurance industry.*

The Supreme Court reaffirms its above opinion many times throughout its decision. Here, on pg. 14, it states:

*Independent of the statute [i.e. RCW 48.17.010], Land Title had the authority to solicit insurance for CTIC and to bind CTIC by its unlawful solicitations. This court has recognized that a principal's grant of authority may come with implied authority to perform other acts that are necessary steps to achieving the principal's objective or that are customary for agents performing the work. Citing its own holdings, the Supreme Court notes: We have held that a real estate agent "employed for the sole purpose of procuring a purchase for real property ..." nevertheless had the authority to exhibit the property and make representations about its area and boundary lines, because negotiation would be impossible otherwise. ... "Authority to perform particular services for principal carries with it the implied authority to perform the usual and necessary acts essential to carry out the authorized services....actual authority to perform certain services on a principal's behalf results in implied authority to perform the usual and necessary acts associated with the authorized services."*

10. In addition, the Supreme Court cites *Third Restatements of Agency (Second)* and *(Third)* as support for that portion of its Decision based upon application of common law principles:

*The Second Restatement defines "inherent agency power," which arises not from the principal's authorization to perform the acts at issue, nor from apparent authority or estoppel; "but solely from the agency relation and exists for the protection of persons harmed by or dealing with a servant or other agent. Restatement (Second of agency Sec. 8A (1958). ... [it] would be unfair for an enterprise to have the benefit of the work of its agents without making it responsible to some extent for their excesses and failures to act carefully. Id. cmt. b. As the Second Restatement goes on to explain,*

*[a] general agent for a disclosed ... principal subjects his principal to liability for acts done on his account which usually accompany or are incidental to transactions which the agent is authorized to conduct if, although they are forbidden by the principal, the other party reasonably believes that the agent is authorized to do them and has no notice that he is not so authorized.*

11. Therefore, the Supreme Court concludes,

*Land Title is authorized to solicit for CTIC under both statute and common law.*

No significant factual differences between *Chicago Title* and this case.

12. The Supreme Court opinion in *Chicago Title* contains sufficient similar facts and reasoning to support its application to this case. The few facts that differ in this case do not justify a decision different than that reached by the Supreme Court in *Chicago Title*. The fact that Stewart's direct operations theoretically competed with Rainier is irrelevant to whether Stewart is vicariously liable for the violations of its appointed title agent. Nor is it important that, as such, Stewart was kept from Rainier's marketing secrets even if this had been found to be the case. That Rainier provided the advertisement and link for free is also irrelevant: the problematic value was to Nest Financial and need not have been a cost to Rainier. Nor does the number of violations, nor the length of the agency relationship between the title insurer and agent make any legal difference between the decision in *Chicago Title* and this case. Nor indeed does the fact that in *Chicago Title*, its agent was an exclusive agent for Chicago: while it was found in this case that Stewart's agent was also an exclusive agent for Stewart by virtue of the fact that it was actually only appointed to act as an agent for Stewart and in that respect was quite similar to the relationship between Chicago and Land Title, even if Rainier represented other title insurers this fact cannot be presumed to alter the application of statutory and common law principals in determining Stewart's vicarious liability for Rainier's acts. As to Stewart's argument that in its private Agreement it gave up its right to control Rainier, again the Supreme Court's decision in *Chicago Title* governs:

*Having found statutory and implied authority, we need not reach the alternative test of whether CTIC had the right to control Land Title.*

13. While Stewart's arguments have been carefully made and presented, and the undersigned has carefully considered these arguments, it is not reasonable that Stewart can appoint Rainier to represent it as its duly appointed title agent under RCW 48.17.010(15), but then - in a private Agreement between Stewart and Rainier - privately refuse to authorize Rainier to do anything but "sell" Stewart's policies on Stewart's behalf, transferring all control over solicitation and negotiation and presumably all other activities to Rainier as an "*independent policy-issuing agent*" to the effect that Stewart is no longer liable to the OIC for violations of Rainier committed in the conduct of any activity that is not "selling." Pursuant to well established case law cited by the OIC which dates back to the adoption of the Insurance Code in 1911, given the authority given to title insurance agents who are appointed by title insurance companies under the Insurance Code; and, in addition, under common law principal-agent theory, Stewart cannot shield itself from liability to the OIC for its agent's advertising violations by privately transferring control and responsibility for advertising for Stewart policies to its title agent in a private Agreement between the two of them.

14. Based upon careful review and consideration of the written and oral arguments of the parties including the recent decision of the Washington State Supreme Court in *Chicago Title* cited and discussed at length above, all other case law and other authorities cited in the pleadings of the parties, all exhibits admitted during the hearing, and the entire hearing file, for the above reasons, it is hereby concluded that Stewart Guaranty Title Association is liable to the OIC for

the regulatory violations of RCW 48.29.210 and WAC 284-29-200 committed by its duly appointed title insurance agent, Rainier Title Company, LLC.

15. It is further concluded that it is reasonable that a \$10,000 fine pursuant to RCW 48.05.485 should be imposed on Stewart for Rainier's violation of RCW 48.29.210 and WAC 284-29-200, the illegal inducement statute and regulation. This fine is consistent with applicable rules governing penalties for these types of violations.

### ORDER

On the basis of the foregoing Findings of Facts and Conclusions of Law,

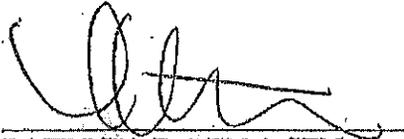
**IT IS HEREBY ORDERED** that Stewart Title Guaranty Company, an authorized title insurance company, which has duly appointed Rainier Title Company, LLC, to act on Stewart's behalf as its licensed title insurance agent as contemplated by RCW 48.17.010 and 48.17.160, is liable to the OIC for the regulatory violation committed by Rainier Title Company, LLC, in the course of Rainier Title Company, LLC's marketing activities conducted on behalf of Stewart Title Guaranty Company;

**IT IS FURTHER ORDERED** that in its advertising and marketing activities on behalf of Stewart Title Guaranty Company during the period from on or about March 20, 2009 to July 1, 2010, Rainier Title, LLC, advertised with a producer of title business and in so doing violated RCW 48.29.210 and WAC 284-29-200, the illegal inducement statute and regulation, and that Stewart Title Guaranty Company is liable for those violations;

**IT IS FURTHER ORDERED** that a fine is imposed on Stewart Title Guaranty Company in the amount of \$10,000 pursuant to RCW 48.05.185 for the violation of RCW 48.29.210 and WAC 284-29-200, the illegal inducement statute and regulation, committed by its duly appointed title insurance agent Rainier Title, LLC;

**IT IS FURTHER ORDERED** that said fine shall be paid within 10 business days of the date of this Order to the Office of the Insurance Commissioner, by mailing payment to P.O. Box 40255, Olympia, Washington 98504-0255, or delivering to 5000 Capitol Boulevard, Tumwater, Washington 98501. Should it become necessary to take further action to collect this fine from Stewart Title Guaranty Company, the Insurance Commissioner may seek enforcement of this Order from the Thurston County Superior Court pursuant to RCW 48.02.080.

ENTERED AT TUMWATER, WASHINGTON, this 13<sup>th</sup> day of December, 2013, pursuant to Title 48 RCW and specifically RCW 48.04 and Title 34 RCW and regulations applicable thereto.



PATRICIA D. PETERSEN  
Chief Presiding Officer

Pursuant to RCW 34.05.461(3), the parties are advised that they may seek reconsideration of this order by filing a request for reconsideration under RCW 34.05.470 with the undersigned within 10 days of the date of service (date of mailing) of this order. Further, the parties are advised that pursuant to RCW 34.05.514 and 34.05.542, this order may be appealed to Superior Court by, within 30 days after date of service (date of mailing) of this order, 1) filing a petition in the Superior Court, at the petitioner's option, for (a) Thurston County or (b) the county of the petitioner's residence or principal place of business; and 2) delivery of a copy of the petition to the Office of the Insurance Commissioner; and 3) depositing copies of the petition upon all other parties of record and the Office of the Attorney General.

Declaration of Mailing

I declare under penalty of perjury under the laws of the State of Washington that on the date listed below, I mailed or caused delivery through normal office mailing custom, a true copy of this document to the following people at their addresses listed above: Stephen J. Sirlami, Esq., Mike Kreidler, James T. Odiome, Esq., William R. Michels, Marcia Stickler, Esq., and AnnaLisa Gellermann, Esq.

DATED this 16<sup>th</sup> day of December, 2013.



KELLY A. CAIRNS