

BEFORE THE STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER

FILED

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HEARINGS UNIT
OFFICE OF
INSURANCE COMMISSIONER

In the Matter of

**First American Title Insurance
Company,**

Authorized Title Insurer.

Order No. 15-0166

WAOIC No. 461

NAIC No. 50814

NOTICE OF REQUEST FOR
HEARING FOR IMPOSITION
OF FINE

TO: Jerry Kindinger, Counsel, First American Title Insurance Company
Ryan, Swanson & Cleveland PLLC
1201 Third Avenue Suite 3400
Seattle, WA 98101-3034

The Washington State Office of the Insurance Commissioner ("Insurance Commissioner") has requested that a hearing be set in this matter by the Insurance Commissioner's Hearings Unit.

A. BASIS

1. First American Title Insurance Company ("First American") is an authorized title insurer domiciled in Nebraska and duly authorized to engage in the business of title insurance in the state of Washington since January 2, 1969.

2. First American was approached by the Snohomish County Camano Association of Realtors ("SCCAR") in 2014 and requested that it once again sponsor a real estate "Economic Forecast" presentation by an economist from Zillow® on October 16, 2014. First American had approached SCCAR to cosponsor the same event in 2013. Zillow® does not charge for this presentation. First American would take care of all of the planning and execution of the event,

but it would technically be a “trade association event” under WAC 284-29-220. First American arranged to have a mortgage lender, Cobalt Mortgage, bring in and pay for lunch. According to Senior Operations Counsel for First American, a member of First American’s marketing team created the flyer with its logo affixed, and sent it to SCCAR for addition of its logo and distribution. First American Sales Manager Sara Christensen, who secured the venue, arranged for the speaker and got Cobalt to pay for lunch, told the Insurance Commissioner investigator that SCCAR created the flyer, but that she sent the flyer to her “customers,” as well.

3. A total of 270 members of SCCAR attended the presentation, none of whom were affiliate members that are competitors of First American. Trade association events involving title companies are limited by WAC 284-29-220. Title company-sponsored educational seminars are also governed by WAC 284-29-235.

4. One of the employees of an affiliate member, Ruth Hopkins, a manager at Old Republic Title (“Old Republic”), a First American competitor, came across the flyer advertising the event on First American’s Facebook page. She contacted SCCAR to find out whether this was an association event or a First American event, and why Old Republic was unaware of the event. SCCAR Director Matthew Wahlquist told her that this was a private, closed event not open to the entire membership, orchestrated entirely by First American. He further told her that SCCAR had no control over who was invited to the event. Ms. Hopkins specified that Mr. Wahlquist told her that First American had approached SCCAR to sponsor the event. Ms. Hopkins retired from Old Republic soon thereafter.

5. Another Old Republic employee then made a complaint to the Insurance Commissioner, citing violations of the title insurance rules in WAC 284-29. The gist of his complaint was that First American used SCCAR to disguise their own event as a trade association event, a violation of WAC 284-29-200(6). Had it been offered as a free event sponsored by First American alone, it would have had to have been restricted to education regarding title insurance, title to real property, or escrow topics. This economic forecast information seminar could not have been properly given by First American alone without charging attendees for it. First American confirmed to the Insurance Commissioner investigator that it had put on a similar SCCAR event in 2013.

6. Governmental Affairs Director for SCCAR, Ryan McIrvin, told the Insurance Commissioner investigator that First American had approached SCCAR to sponsor the event, but did not specify whether it was for the 2013 event, or the 2014 event. He stated that SCCAR's only role was to distribute the flyer created by Ms. Christensen to its active members, presumably including affiliate members that are First American's competitors. He noted that SCCAR had no contacts at Zillow®. Notwithstanding, Mr. Wahlquist told the Insurance Commissioner investigator that it was he who approached First American to sponsor the 2014 event, as the 2013 event had been a success.

7. After First American retained attorneys, both Mr. Wahlquist and Mr. McIrvin denied having told the Insurance Commissioner investigator and Ms. Hopkins that the event was limited to certain attendees at First American's behest and was put on entirely by First American.

8. The attendee list provided to the Insurance Commissioner by First American confirmed that of the 270 attendees, the only affiliate members who attended the event were those that could also bring title insurance business to First American, mortgage lenders and homebuilders. According to SCCAR's membership rules, people who are not real estate licensees are only eligible for affiliate membership status.

9. When requested by the Insurance Commissioner investigator, First American reported that the total employee time used to put on the event was fewer than three hours. First American would not elaborate further nor remit any documentation of names, salaries or other expenses incurred other than the bill for the venue showing an \$875 rental fee.

10. First American is limited to a contribution of \$1,000 per event with a trade organization. Even if the First American event had been a legitimate trade organization function, it exceeded the contribution limit since it refused to add to the \$875 venue rental cost to the value of its employee time used in coordinating with Zillow®, finding a cosponsor for the lunch, creating the flyer, arranging for the venue, etc., as required by WAC 284-29-235(4). Documentation of compliance is required to be kept and shared with the Insurance Commissioner under WAC 284-29-265.

B. PENALTIES AND RELIEF REQUESTED

The Insurance Commissioner seeks to impose a fine against First American Title Insurance Company in the amount authorized by law for the following violations:

1. RCW 48.29.210(2) states that a title insurer, title insurance agent, or employee, agent, or other representative of a title insurer or 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*. [Emphasis added]. That is, if the thing of value is not given in strict compliance with the regulations, it is given in violation of the statute.

2. WAC 284-29-200(6) states that title companies must not enter into any agreement, arrangement, scheme, or understanding or in any other manner pursue any course of conduct, designed to avoid RCW 48.29.210 and WAC 284-29-200 through 284-29-265. First American's arrangement with SCCAR violated this regulation.

3. WAC 284-29-220(2) states that a title company may donate to, contribute to or otherwise sponsor a trade association event only if all of the following conditions are met:

- (a) The event is a recognized association event that generally benefits all members and affiliated members of the association in an equal manner;
- (b) The donation must not benefit a selected producer member of the association unless through a random process; and
- (c) Solicitation for the donation must be made of all association members and affiliated members in an equal manner and amount.

By excluding some affiliate members from the event, First American violated this regulation.

4. WAC 284-29-235 states that (1) A title company may conduct educational programs at no charge only if the content of the program consists solely of education regarding title insurance, title to real property, and escrow topics; (3) A title company may sponsor an educational seminar of a trade association subject to the limits in WAC 284-29-220; (4) A title company may sponsor an

educational program on topics other than title insurance, title to real property, and escrow only if: (a) The educational program is open to all producers; and (b) The attendees actually pay to attend the program the greater of: (i) All expenses and costs associated with the delivery of the educational program by the title company; or (ii) What the attendee would pay to attend a similar seminar sponsored by entities other than title companies on the open market. The calculation by the title company of the expenses and costs associated with the delivery of the education program must include, but not be limited to, all travel, refreshments, speaker fees or wages of the speaker, facility rental, preparation of materials distributed at the program, parking, advertisement, and wages of arranging and planning for the program. By giving an educational seminar without cost on subjects other than solely about title insurance, title to real property, and escrow topics, First American violated this regulation.

5. WAC 284-29-265 states that (1) A title company must keep and maintain complete, accurate, and sufficient records to demonstrate compliance with WAC 284-29-200 through this section and keep them for a period of five years after the end of the year during which any thing of value was given to a producer; (2) All records of a title company kept in order to meet the terms of WAC 284-29-200 through this section must be made available to the commissioner or the commissioner's representative during regular business hours; (3) Failure of the title company to keep the records required by WAC 284-29-200 through this section is a violation of RCW 48.29.210. By failing to have records demonstrating compliance with WAC 284-29 available to the Insurance Commissioner, First American violated this regulation.

6. Pursuant to RCW 48.110.120(2), the Insurance Commissioner is authorized to initiate a hearing pursuant to RCW 48.04.050 or take actions described in RCW 48.02.080, including the issuance of a cease and desist order. In addition, pursuant to RCW 48.15.023 and RCW 48.17.063, the Insurance Commissioner may also take further steps, including the imposition of a civil penalty of not more than \$25,000 for each violation of RCW 48.15.020 or RCW 48.17.060.

7. The Insurance Commissioner requests that First American Title Insurance Company be ordered to pay a fine in the amount of \$100,000.00 (One Hundred Thousand Dollars) to the Insurance Commissioner's office within thirty days of the entry of the Order.

C. NOTICE OF HEARING

1. The Insurance Commissioner requests that a hearing be held to consider the above-referenced basis, penalties, and relief requested.

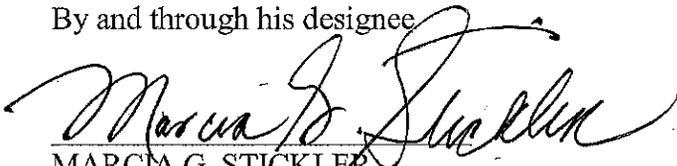
2. The Insurance Commissioner will participate in this matter through his designated representative, Marcia G. Stickler, Insurance Enforcement Specialist, P.O. Box 40255, Olympia, Washington, 98504-0255, MarciaM@oic.wa.gov, (360) 725-7048.

Dated at Tumwater, Washington, this 15th day of December 2015.



MIKE KREIDLER
Insurance Commissioner

By and through his designee



MARCIA G. STICKLER
Insurance Enforcement Specialist
Legal Affairs Division

CERTIFICATE OF MAILING

The undersigned certifies under the penalty of perjury under the laws of the state of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the state of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be filed and served the foregoing Notice of Request for Hearing for Imposition of Fine on the following individuals in the manner indicated:

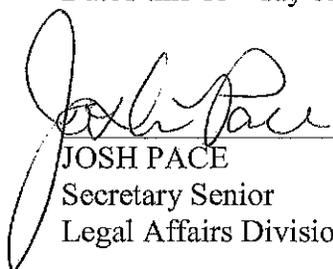
Via Hand Delivery

William Pardee, Presiding Hearings Officer
Washington State Insurance Commissioner
5000 Capitol Blvd
Tumwater, Washington

U.S. Mail Via State Consolidated Mail Service With Proper Postage Affixed

Jerry Kindinger
Ryan, Swanson & Cleveland PLLC
1201 Third Avenue Suite 3400
Seattle, WA 98101-3034

Dated this 15th day of December, 2015, in Tumwater, Washington.



JOSH PACE
Secretary Senior
Legal Affairs Division