



Fidelity Title Company

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April 1, 2016

Jim Tompkins
Office of the Insurance Commissioner
P.O. Box 40260
Olympia WA. 98504-0260

RE: R 2016-05

Dear Mr. Tompkins,

I am writing as the president of Fidelity Title Company and Schreiner Title Company, title insurance agents with history back to 1905. I would like the Commissioner to consider several points prior to engaging in adopting new rules directed at title insurance agents in Washington.

While independent escrow agents regulated under RCW 18.44 and title insurers and their agents close real property transactions with almost identical methods, they are quite different. The practice of title insurers and agents closing transactions began with the decline of abstracts. The single greatest potential challenge to the fee estate insured by a title policy is a defect in or insufficiency of the bargain between buyers and sellers. In cases involving ownership of real property, courts have traditionally looked to the sufficiency of the bargain to determine the quality of the fee ownership. If there is no bargain, there is no sale and a total loss of title. One of the primary reasons the title industry closes transactions is to limit risk such as sufficiency of the sale bargain and the actual identity of the seller. Independent escrow agents close transactions to collect a fee and make a profit. While charging a fee for closing services, the title industry also seeks to limit insuring risk.

Title insurance companies and their agents are corporate or partnership entities. They are licensed and regulated as entities without requirement for individual licenses. The same title insurers and agents that train and oversee title officers who determine risk in providing title commitments and policies also train and oversee their closing officers. Independent escrow agents are mostly small companies or individuals with limited oversight except for the Department of Financial Institutions. Because the title industry is responsible to the insured buyer or lender under the policy, the competency of the closing process is also assumed by the insurer and agent. Title insurers have long been auditing agents to assure proper procedures are adhered to and that escrow accounts are in balance.

The CFPB within the past few years has increased regulatory control over all financial service providers. The federal board has declared that all providers of financial services are liable and responsible for the actions and security of their third party service providers. To avoid an impossible number of procedural audits of the title industry, the American Land Title Association developed an alternative. ALTA developed a framework of "best practices" to meet lenders' vetting requirements for privacy and sound closing practices. The Washington title industry has spent the past three years adopting policies and procedures to meet "best practices" standards. Many agents, if not all have completed this process. Some, like our company, have received third party procedural audits and have been certified as a "best practice" escrow service provider. The practices and policies of the ALTA "best practices" model meet or exceed escrow practices established for independent escrow closers pursuant to RCW 18.44 and WAC 208-60-410 and 208-60-520 through 590.

When first considering legislation to license and regulate escrow service providers, the Washington legislature specifically exempted the title industry from escrow licensing and regulation. When RCW 18.44 was rewritten, the exemption in the original legislation was recognized and the governmental oversight was confirmed to be Office of the Insurance Commissioner. The committee which drafted amendments to RCW 18.44 also drafted amendments to RCW 48.29 where three issues were addressed: 1) The requirement to keep adequate records; 2) The requirement to keep and account for escrow funds separate from other company funds; 3) Comply with Washington "collected funds" laws. Those amendments relative to the conduct of escrow business by the title industry are represented by RCW 48.29.190. Section 190 (a) provides for a rule determination of what constitutes adequate records. The Commissioner should determine if additional legislation would be necessary in order to complement WAC 208-680-410 through 590.

Most, if not all, title insurers and title agents have a long history of providing exceptional closing services. Over the years all such providers have invested in and perfected multiple systems for the control and audit of their escrow operations. Not all companies use identical systems or processes to manage their operations. Many larger companies reconcile accounts with internal accounting departments. Smaller agents like my companies use independent third party vendors to provide off site, monthly, three-way reconciliation of all escrow accounts. Drafting of administrative rules at this time may not fit operational procedures which have been proven to be safe and effective. I do not believe that it is in the best interest of the public or the title industry for the Commissioner to adopt rules similar to WAC 208-680. That rule and the statute for which the rule was written are designed to regulate a different part of the escrow industry.

Finally, any regulation of title industry closing practices should affect both title insurers and title agents. Title agents function just like title insurers in determination of research, examination, risk assumption, commitment and policy writing and just about every other function. The major difference is that agents are not licensed to provide insurance. Agents issue the policy of the agent's principal pursuant the terms of a policy issuing agreement. All of the function of title insurers and title agents has been fully explored, reviewed and reported by the Commissioner's own task force.

In conclusion, I do not believe additional rules are called for. If the process continues, the Commissioner should conduct a study of the industry in order to determine what rules, if any, are needed or appropriate. Please include the undersigned in notices provided to stake holders.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gary Kissling', written over a horizontal line.

Gary Kissling
Fidelity Title Company
Schreiner Title Company