



## Risk Management Alert

*June 3, 2008*

**THIS WARNING APPLIES TO ALL BROKERS AND LICENSEES, BOTH COMMERCIAL AND RESIDENTIAL, REGARDLESS OF WHETHER BROKER HAS A FINANCIAL INTEREST IN A TITLE COMPANY.**

Effective June 12th, Washington Law provides new legal authority for state regulators to take enforcement action against real estate agents and brokers who receive or accept inducements from title insurance companies unless those inducements are authorized by state agency administrative rules. To date, state agency administrative rules have not been adopted and therefore, for the time being, the only safe practice is to decline receipt of any offer of anything of value from any title company, agent or employee.

The law was adopted in response to investigations that disclosed title insurance industry-wide violations of limits on paying inducements. The concept of this law is not new but under this new law, title insurance companies will be prosecuted for paying the inducements AND AGENTS AND BROKERS WILL BE PROSECUTED FOR RECEIVING THE INDUCEMENTS. While residential agents have always been prohibited from receiving anything of value from a title company under RESPA, a federal law, RESPA has not often applied in the context of a commercial transaction. This new state law draws no distinctions between commercial and residential practices and creates a RESPA-like prohibition against ANY agent or broker accepting ANYTHING of value from a title insurance company, agent or employee.

In addition, Brokers/Owners of real estate companies who also have a financial interest in a title company, will be prohibited from paying inducements to their own agents for the referral of business to broker's title insurance company.

The Washington REALTORS® will be meeting with representatives of the Real Estate Program of the Department of Licensing later this week to seek additional clarifications on how the new law will be implemented.

In the meantime, agents and brokers should be aware that "inducements " to real estate agents from Brokers who have financial interests in a title company may include items such as:

- Reducing and/or paying of Desk fees for referring/directing title insurance business
- Reducing and/or paying of Advertising for referring/directing title insurance business
- Reducing and/or paying for reimbursements or expenses for referring/directing title insurance business
- Waiving, reducing and/or directing payment of any other expenses or reimbursement for referring /directing title insurance business

In addition ALL REAL ESTATE LICENSEES should be aware there are many ways they can be receivers of potential "Things of Value" from title companies. Receipt of any of these items is appropriate if agent pays value for the item but would possibly constitute a violation of the new law if agent receives the item, from a title insurance company or agent, without payment.

- Shared advertisements in which agent does not pay a pro rata share of the costs based on the amount of ad space used
- Payment, in whole or in part, for clock hours tuition or other related expenses
- Title cancellation fees, owing from agent, that remain unpaid
- Open house refreshments
- Hand Outs that include anything other than the property's last deed of record, last deed of Trust of record, a plat map and tax information. All other handouts must be purchased by agent.
- Farming packages identifying names and addresses of multiple real property owners for use by an agent in soliciting business
- Copies of CC&Rs
- Comparable sales information
- Entertainment
- Gifts
- Tickets to events or shows
- Sponsorship of association, company or agent events
- Any of the above that the title insurance company provided for a fee that has not been paid

This list is not complete so ALL licensees should consider "ANYTHING of Value" received from a Title Company, agent or employee as a potential inducement until you receive more information following the DOL meeting this week. The Washington REALTORS® will provide brokers an additional update on the new law as soon as it is available.