



OLD REPUBLIC

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Bulletin

To: All Agents, and Direct Operations in Texas and New Mexico

From: Dwight J. Dunlap, Senior Counsel

Date: 07/08/2005

Re: HB 2565 Amended Insurance Code (P-53)

On June 17, 2005, Texas Governor Rick Perry signed into law House Bill 2565. This Act amends those provisions in the Insurance Code dealing with rebating. There are provisions in the Act which deal with virtually every line of insurance carrier.

The latest amendments to HB 2535 which were also made a part of the Act, significantly impact the title insurance industry in that the amendment specifically defines certain activities that are important to the marketing of your business as being specifically excluded from conduct otherwise defined as illegal rebating. The amended bill's provisions will be found in section 2502.055 of the Insurance Code. The activities which the legislature has in effect approved as exceptions to rebating on behalf of the insurance agents as well as title underwriters are as follows:

1. "Engaging in legal promotional and educational activities that are not conditioned on the referral of title insurance business;
2. Purchasing advertising promoting the title insurance company or the title insurance agent at market rates from any person in any publication, event, or media;
3. Delivering to a party in the transaction or the party's representative legal documents or funds which are directly or indirectly related to a transaction closed by the title insurance company or title insurance agent; and
4. Participating in an association of attorneys, builders, developers, realtors, or other real estate practitioners provided that the level of such participation does not exceed normal participation of a volunteer member of the association and is not activity that would ordinarily be performed by paid staff of an association."

This Act in amending section 2502.055 of the Texas Insurance Code allows title agents to engage in educational activities. The Act does not specifically list to whom educational courses may be rendered, nor does the act distinguish between whether the courses offered may or may not be offered to satisfy continuing education requirements.

This amendment to the Texas Insurance Code would seem to permit an agent to purchase advertising in a realtor's magazine or other types of distributive materials as long as the title agent or underwriter is not subsidizing the publication by paying an amount in excess of market rates. This bill, as amended defines "market rate" as:

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"The price at which a seller, under no obligation or duress to sell, is willing to accept and a buyer, under no obligation or duress to buy, is willing to pay in an arms-length transaction. The market rate is determined by comparing the rights or items purchased or sold to similar rights or items that have been recently purchased by others or sold to others including others not in title insurance business."

It will be interesting to observe just how the Texas Department of Insurance will react to this new statutory provision. A word of caution, we would anticipate the department to be very active in enforcing this regulation.

The legislature may have been catering to other lobbying interests, rather than that of the title insurance industry, in amending the Insurance Code to allow title agents to again deliver commitment checks and documents to the real estate in an office. However, once again the doors to the realtor offices may be opened to marketing calls that may have been previously restricted.

Newly amended Section 2502.055 will allow title agents to again work with the realtors in their associations. These activities present opportunities to get to know the brokers as well as their agents. However, the new law when it becomes effective, is very clear that activities must include only those activities which amount to what the regulators will accept as being "volunteer" work or services. Activities or functions that would normally be preformed by full time staff will still be considered a rebate.

Although the effective date of Act is stated as September 1, 2005, it actually does not practically affect the title insurance industry until January 1, 2006. Section 8 of the Act provides that it becomes effective as "conduct with respect to an insurance policy that is delivered, issued for delivery... on or after January 1, 2006." This delay will hopefully give the Texas Department of Insurance an opportunity to revise its Procedural Rule P-53 accordingly. Until the TDI does revise P-53, this rule will continue to regulate the conduct of the title insurance industry.

The Texas Department of Insurance has not as yet announced any response as to how they will handle the effective date of this act. Therefore, Procedural Rule P-53, as it presently is written and in effect, still regulates our industry.

Please call our underwriting counsel if you have any questions or concerns about these foreclosures.

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