STATE OF ALASKA
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
DIVISION OF INSURANCE

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BULLETIN B91-l

TO: ALL TITLE INSURANCE AGENTS

RE: FEES TO ENHANCE TIMELY PAYMENT ON TRUSTEE SALE GUARANTEES

Recently, the following question was posed to the Division of Insurance.

Is it permissible to pay a fee to a client in order to be paid more timely on outstanding receivables for trustees sales guarantees?

After researching the question and its implications, the Division of Insurance concludes that it is **not** permissible to pay a fee to a client in order to be paid more timely on outstanding receivables for trustees sales guarantees. Such an action would constitute an illegal rebate which is prohibited by statute.

In 1981, a hearing was held before the Division of Insurance which resulted in the issuance of Order 81-3 by the Director. In Section B. of that order, the Director held that:

"Any class of service including, but not limited to, issuance of title insurance policies, preliminary reports, property profiles, listing packages or packets, delivered or provided in this state by a title insurance company or title insurance agent, which relies in whole or in part upon documents contained in the title plant or the public record, must bear a charge commensurate with the cost of delivering or providing that class of service."

This finding was consistent with the fact that the title plant exists to facilitate the issue of a title insurance policy or contract. As noted in that same order, title insurance is different from almost all other kinds of insurance. The premium paid is primarily a service fee that covers the expense of searching, analyzing, sorting, cross checking, and indexing of recorded information so that the history or "chain of title" on a property can be complied. The title premium has a minimal risk bearing capacity. Title insurance is primarily an expense driven product.

Title insurance is different in another respect. Because it is an expense driven product, the premium is earned when the work is completed. This may precede the inception date of actual coverage. The premium for the work completed on a valid order is fully earned in accordance with the rate schedule filed with and approved by the Division of Insurance. Once that work is complete and the appropriate report is completed, payment for the work is due. Any payment of

a fee by the title insurance company or title insurance agent to the trustee to secure a loan to pay the premium would be considered a rebate. The order went on to state:

"A charge required under 'B' of this order may not be waived, except that a preliminary report need not be charged if it is replaced by a title policy."

Alaska has a clear definition of an illegal rebate in the title insurance law. It reads:

AS21.66.310 REBATES PROHIBITED. (a) A title Insurer, or officer, employee, attorney, agent or solicitor of a title insurer, may not pay, allow or give or offer to pay, allow or give, directly or indirectly, as an inducement to obtaining a title insurance business, a rebate, reduction or abatement of a rate or charge made incident to the issuance of the title insurance, a special favor or advantage, money consideration or other inducement. A charge made incident to the issuance of the insurance is construed to include, without limitation, escrow, settlement and closing charges.

(b) An insured named in a title insurance policy or any other person directly or indirectly connected with the transaction involving the issuance of a title insurance policy, including, but not limited to a mortgage lender, real estate broker, builder or attorney, or an officer, employee, agent, representative or solicitor of a mortgage lender, real estate broker, builder, attorney, or other person, may not knowingly receive or accept, directly or indirectly, a rebate, reduction or abatement of a charge or premium or a special favor or advantage, or a monetary consideration or inducement.

(c) Nothing in this section prohibits

(1) the payment of fees for services actually rendered as a result of a title insurance transaction; or

(2) the payment of a commission to a legally appointed title insurance agent who issues the policy of title insurance.

This statute effectively prohibits payments to an attorney to induce the remission of premium charges. The very offer by an attorney is not legal.

A title insurance company or title insurance agent who fails to bill and collect appropriate premium is also viewed as engaging in a rebate since the uncollected funds have an interest value. The test the Division will apply in determining whether a rebate has occurred is to view the transactions accepted by the title insurance company or title insurance agent from persons or firms who consistently fail to pay in a timely fashion. If no remedial actions are taken or evident, a finding of rebate will occur. This can become a serious issue in view of the penalty provisions for persons engaged in rebate. The statute reads:

AS21.66.340 ADDITIONAL PENALTY FOR REBATES. A person who violates AS 21.66.310 is liable to the state for five times the amount or value of the rebate, reduction, or

abatement of any rate or charge made incident to the issuance of title Insurance, or a special favor or advantage, or a monetary consideration or inducement.

The Division of Insurance has become substantially more active in its market conduct examinations of insurers and agents. As those examinations extend to the title insurance business, rebates will be an area of substantial interest.

The title insurance company or title insurance agent should be demanding payment when title is ordered from the trustee.

Done this 9th day of April, 1991 at Juneau, Alaska.

David J. Walsh, Director
Division of Insurance