



Illinois Department of Financial and Professional Regulation

Division of Financial Institutions

BRUCE RAUNER
Governor

BRYAN A. SCHNEIDER
Secretary

FRANCISCO MENCHACA
Director
Division of Financial Institutions

Proposed Regulatory Guidance Title Insurance: - Splitting Premium And Fees With Title Agents **Public Comments**

1/24/18 I wonder if the Department should make it clear that its concern rests with the “attorney as title agent” fact pattern. In the Department’s memorandum it states that “agents are usually attorneys”. I would respectfully disagree with that, since outside of Cook, the collar and two other counties, attorneys as active agents share the title insurance field with many non-attorney title insurance companies acting as authorized licensed “agents” for national underwriters.

Full-service title companies, such as ours, perform every task required for title insurance issuance. We earn every sparse dollar derived from our financial arrangements with our National Underwriters; and those dollars are based on the extremely small title invoices that are prevalent in the “downstate” title insurance environment.

And parenthetically, regardless of recent court rulings to the contrary, and speaking strictly for myself as a title insurance attorney, I think the real focus of the debate is still going to be: (a) are the fees being provided to attorney-agents merely a form of kickback for a referral stream, and (b) are the fees being provided to attorney-agents supported by any substantive amount of legal or title insurance work actually performed by that attorney-agent?

1/24/18 I have read the IDFPR Guidelines and I do agree that some regulation needs to be in place for attorney agents. I too have heard of 90-10 and 95-5 splits with attorneys. This leaves only 5-10 % available to the Underwater. Our current agreement with our Underwriter is to give them 17% of the policy fee. So you can see that with the higher splits, the title company must pay some of the policy fees to the Underwriter out of their pocket. Today, the Agent Title Companies, find themselves in competition with their own underwriters, and the Underwriter wins because they can afford a 95-5 split to the attorney agent.

In order for the Agent Title Companies and the Underwriters themselves to make enough money to pay the bills and the employees, they must increase their “junk” fees. The people that suffer from this Attorney Agent Program are the Buyers and Sellers. The attorneys triple the amount of money they make from a seller while doing nothing to earn it. Perhaps the best thing for the consumer is that we get rid of the attorney agent

program and allow the attorneys to practice law and title companies to perform title searches, closings and issue title polices. Attorneys could raise their fees and title companies can charge reasonable fees to the consumer.

1/30/18 My thanks to the department for allowing a comment period for the guidance issued in December.

First of all, I would like to say that in my opinion, as an industry and as the Illinois department who regulates the underwriters of this industry we should all be concerned about the consumer and the long-term viability of the industry. The title industry must remain viable so that when a consumer or lender makes a claim the reserves are there to take care of that claim. Also, in terms of the US economy, title insurance is an economic driver. The ability to buy, sell and refinance real estate as quickly, efficiently and safely as we do in the United States is because of title insurance. Nowhere else in the world is it done as easily and quickly. People use the equity in their real estate holdings to send their children to college, invest in the stock market, improve their homes and start businesses. And the market allows them to do it because they can depend on title insurance to ensure that the transactions are valid and safe.

Improper inducements or compensation

I disagree with the idea of a split of fees based on volume or the agent who sells it. I am speaking as a title agent. The title agent does the following work when a policy of title insurance is contracted for:

1. that company does a thorough search of the public records on both the property and the individual parties involved.
2. we examine those documents and make determinations as to what EXCEPTIONS to the title will be raised on our commitment to insure the transaction whether it's a sale or refinance of the property
3. we work with the parties including a lender to gather together the documents and funds needed to bring the transaction to a successful conclusion
4. we bring the parties together to close that transaction, making sure that all documents are executed properly and all the correct documentation is presented
5. we examine these documents, disburse funds, record documents and finally issue a title policy.
6. we remit to our underwriter the funds agreed to in our agency contract which go toward reserves for claims, policy taxes, operating expenses and finally profits which insure the viability of that company.

The agreement between agent (such as Prairie Title) and underwriter is an agreement as to which portion of the title fees will be kept by the agent for work done and what will be remitted to the underwriter for the claim reserves, policy taxes, operating expenses and profits which will keep the corporation in business.

In the case of an attorney agent, we act as a servicing company. We do the search (1) type up the commitment to insure the transaction via directions and a work sheet from the attorney, close the transaction (4,5), collecting more instructions from the attorney regarding what items will continue as exceptions to the title policy. The attorney collects what we call clearance so that some exceptions can be taken off the final policy

(mortgages from seller for example). The attorney also decides what risks to underwrite. We then do the accounting for the attorney agents (6). And we do all these functions for a service fee usually around \$400.00. This is a fee that should be paid by the attorney for work rendered by his servicing company.

We are aware in the market that some title agencies are allowing the attorney agent to charge his client instead of paying that fee out of pocket.

Confusion may exist in the minds of the department because agents such as Prairie Title compete in the market place against some underwriters who do the same work and who also have attorney agents. We are aware in the Chicago metro area that underwriters may be foregoing a large portion or the full title premium in order to gain market share. This is unsustainable and could also result in harm to consumers.

We are also aware that many additional fees are being added to closings and are charged to the consumer.

RESPA

As you outlined the Real Estate Settlement Procedures Act prohibits anyone from giving or receiving a thing of value in exchange for a referral of business when a federally related mortgage loan is involved. We are aware that real estate firms in the Chicago metro area who have an affiliated title agency are strongly suggesting to attorneys that if they are interested in referrals the title order should be placed with the affiliated title agency. This is an obvious RESPA violation.

This is not the case in other parts of the country where affiliated agencies compete in the market just like [redacted] does.

2/7/18 I am writing to express my take on the Proposed Regulatory Guidance recently published by the Department.

[redacted]

We have written contracts with both underwriters that set our premium split with each. Our split with [redacted] is 80/20 and that with [redacted] is 70/30. Both are well within or below what you refer to as the "norm" regarding splits in Illinois and other Midwestern states. And those splits only apply to policy issuing premium. We never split closing or escrow fees with our underwriters.

I say all of this to point out that I believe some of the assumptions you make in your guideline publication are incorrect.

Firstly, I disagree with your statement that title insurance agents are "usually an attorney." While in recent years the underwriters have sought and acquired attorneys as agents, historically the typical agent in Illinois has either been the old abstract company that already had a presence in a particular county, or a new corporate entity, such as mine, that was created for the specific purpose of searching, examining, determining insurability, issuing the commitment to insure

and ultimately issuing the insurance policies. This network of agents was promulgated by the various underwriters or many years in an effort to service outlying counties where placement of a direct underwriting operation did not make economic sense.

An independent agent, hires staff, buys equipment and software, rents or buys office space and perhaps maintains a title plant, all for the sole purpose of issuing title insurance product and perhaps conducting settlement services in connection with those products. As an independent agent, we do not depend on the underwriter to search, examine, produce or conduct those products or services. In short, the services for which we receive our premium split are, in RESPA's words, "actually performed."

While the underwriters certainly monitor the volume of business we send them and weigh it against the cost of their underwriting support to us, they have not historically rewarded us with extra premium for extra work. In fact, they can and have ended agency relationships when the volume of business from a particular agent could not justify the cost of supporting that agent with underwriting and or marketing assistance.

My knowledge of the attorney-agent/underwriter relationship is limited, and at best anecdotal. But the typical attorney agent does not have a "title staff" employed to produce title insurance product. Their title search is usually performed by their underwriter who produces a preliminary commitment product that the attorney-agent then "examines" and signs off on. The commitment and ultimately the policies are produced by the underwriter, not the attorney-agent. In return for its "examination" of title, the attorney-agent will receive a split of premium from the underwriter.

The point here is that I think it is unfair to group independent corporate agents with attorney-agents when considering agent/underwriter commission splitting guidelines. While your concerns prompting the guidelines are well taken, I would hope that in your endeavor to correct any misdeeds in this regard that your efforts be directed at the proper parties. Most Illinois agents are prototypical small businesses. We offer necessary real estate services to our particular county markets while providing job opportunities to its citizens. Our rates and fees are driven by the marketplace, not by cozy relationships with our underwriters

2/13/18 The time has come when our legislators in Illinois are determining the legality of title fee splitting between the agency and attorneys. This not only includes the percentage the attorney keeps of the policy but also the cost of the closing fees for purchases. 1st attachment is detail of proposal and 2nd attachment is where to send comments.

I have voiced my opinion by sharing the rate card of a national title company's refinance fees and a copy of an actual borrower's purchase CD (personal info removed) to demonstrate the difference in the actual closing fee: \$200 refi vs. \$1250 for \$80,000 purchase price along with additional commentary of how this affects consumers in Illinois.

This is our time to voice the concerns of borrowers/consumers in Illinois. Please take action ASAP.

2/15/18 I have been in the mortgage business for 15 years. I have seen a dramatic increase in title charges on home purchase in just the last year alone. This needs to be addressed. New fees with new names appear and just get overlooked. I am happy there is someone looking out for the consumer. I had to call out one title fee last month for a "Homeowners inflation protection fee of \$175". It was quickly removed from the Closing disclosure without an argument. This leads me to believe there may be other fees that are not needed.

2/21/18 I received the notice today -- actually just a few minutes ago -- on "Proposed Guidance for Title Insurance Agent Compensation".

Eager to see where the meeting on March 5th goes but I wanted to introduce myself and offer any support I could provide from an independent title agent perspective that might help you. I have owned a full-service agency supporting IL, IN, MI and WI since 2007. Further -- I owned a broker owned agency for about two years. So I have plenty of experience that I am happy to share to help you with the can of worms you are opening.

If there is anything I can do or if you are interested in any dialog-- I'm happy to help.

This is an interesting, entrenched, emotionally charged, and complicated subject. Change is not going to be easy for you to introduce, but I'm excited and impressed that you are willing to take on the issue.

My Opinion: I think the Illinois title market is [polluted] with a broken Attorney Title Agency system and a high number of Real Estate Owned Title Firms. I'm not a fan of the IL Agency Practice-- as I think it creates numerous issues - most significant of which is artificially high Title Insurance pricing for the five-collar county area where it is practiced. This hurts the consumer. One look at Rockford or Springfield CD title pricing compared to a Cook County CD says it all. The State of Illinois Title Agency practice combined with the high percentage of Illinois Real Estate Broker owned title firms eliminates the natural competition in the Illinois title market- significantly hurting the consumer.

My position would be to let Illinois Title Insurance services be market driven. Let full service Title Companies do and be paid for settlement and title services. Let the issuing Title agent (be it attorney or full services agent) carry 100% of the responsibility for doing the work and carrying the liability associated with the examination and search of title. If an Attorney Agent is going to get paid for title insurance they should do the work and be responsible for the ramifications. Let title fees be naturally driven to a market appropriate level. Let title agents compete on price and service for the consumer. Let Attorneys charge their appropriate Attorney Fees, a number most likely higher than the average Attorney fee charged to the seller today. The market will force and allow attorneys to charge the consumer a fair and market driven number. Stop paying attorneys for doing a service that full-service title companies are doing today. Stop

fooling the consumer into thinking it's the full-service title company that is responsible for the inflated market title fees. Stop forcing small full-service title companies into doing the wrong things to induce the attorney for his business. Full service title companies can't survive on refinance business because of the low prices the big companies set in the market (a price they can afford because they control the attorney agency market), that's why most smaller full-service title firms don't take refinance business. Stop fooling the consumer into selecting an attorney that is offering them attorney services for \$100- when the attorney is really going to get \$2500.

I've not had the pleasure of meeting you - but I'm looking forward to the opportunity. I very much appreciate you taking on this very emotionally charged subject - it is truly the elephant in the room when it comes to Title Services in Illinois. If you need reference on who I am—[redacted].

Let me know if I can do anything or be a sounding board in any way.

Buckle up -it's going to be an interesting ride you started.....

2/22/18 I wanted to give some feedback on the attorney agency program. I have been in the industry for over 40 years and I am an attorney as well. I find the program unfair to the actual title producers and closing agents who do all of the work but give compensation to someone who feels entitled to the compensation but also feels it is unnecessary to do anything for it and is aggravated when asked to perform the tasks necessary to receive the compensation. The insurance is issued in the name of the attorney agent who post-closing takes no responsibility for any title matters and usually won't even answer the phone or email when contacted. I'm not sure why this was ever deemed a good idea and I'm even less sure about why any servicer would want to give away any portion of compensation that they have earned however I guess we take the world as we get it. That being said, I think 60-40 is a much fairer way of handling it and if the highest percentage in the country is 70/30 why do we have to set a new bar? Thanks for listening.

2/22/18 I was unable to attend the Town Hall meeting held in the Loop on January 3rd but I hope there is still time to comment on the meeting. Firstly, thank you for hosting the meeting. Raising awareness to the market conduct in the Chicago Metro area is paramount given today's environment. Our market is getting increasingly difficult because many title companies and agencies find creative ways to compensate attorneys as title agents. And while your meeting focused primarily on rate splits, there are many other methods of compensation out there. These creative methods all have one thing in common, they hurt the consumer.

In an effort to grow their attorney agent customer base, agents and underwriters alike give more and more dollars to the attorney and, in order to "recoup" that revenue, create fees for services provided to the seller and buyer that have never existed before. One such product is known as a "chain of title". The chain of title in nothing more than listing the details of the last known deed of record: grantor, grantee, date of recording and recording number. Lenders have been requesting a chain of title search for years and it is only recently, within the last few years, that title companies started charging for it. While there is minimal work involved (it takes less than 2 minutes to prepare), I do not believe there is any risk in the product. Furthermore, identifying the last deed of record is part of

all title exams and does not take any additional work to produce. Yet, the going rate for a “chain of title” search, charged to the buyer/borrower, is \$250.00.

A second fee that has now entered the market place is called a “Search and Service Fee” and is being charged directly to the seller.

To elaborate, any corporate agent, like myself, as well as any underwriter, in order to service attorney agents, must provide that agent with a title search and clerical services. These services include commitment and policy typing, premium remittance and policy reporting to an underwriter. There has always been a service/search fee charged to the attorney agent, and rightly so. Not to charge the attorney for those necessary items would be providing him/her with a thing of a value with the intent to obtain more of his/her business, a clear RESPA violation.

However, the practice of NOT charging the attorney is now the norm. Some corporate agents, who like myself, insist on RESPA compliance and charge the service fee are rewarded by lost customers because our attorney agent programs have become less lucrative to the attorney.

We are now seeing some corporate agents and underwriters recoup the search and service fee they once charged the attorney by charging the seller directly. As an example, I have shared the attached rate sheet of one of my competitors [redacted]. I am not singling them out; they are not alone here, but they recently published this rate sheet so I chose to share it. You will see the aforementioned Chain of Title Fee but they also list a “Search and Service Fee”. A review of some of their closing statements, tells us that fee is being charged to the seller. While charging a search fee separately from the premium is customary in other markets and other states, it has always been understood that the premium charged in the Chicago Metro market included a search fee. So now you have a situation where the attorney, representing a seller, benefits by a fee that is now charged to his client. Again, [redacted] is not alone; others also charge this fee to the seller rather than their attorney agents.

My experiences tell me that much of this creativity started and has become prevalent in the realtor controlled title agencies because they have a “captive” market and can abuse the situation. The abuses have simply spread to other traditional title entities in an effort to keep pace in the market.

There are other examples but I do not want to drone on. Suffice it to say, that I truly believe the title insurance industry in the Chicago Metro market has gotten out of control and is desperately in need of some regulation. Believe me, being a proponent of the free market philosophy my entire life, I surprise even myself in typing those words. This market is not capable of policing itself. The fox is watching the henhouse. The very person who should be looking for the best deal for his/her client is the very person who benefits by higher fees. And many title companies are more than happy to feed that fox.

Thank you for your time spent reading this email. Feel free to call upon me in the future should you deem it necessary.

2/23/18 Again-- I appreciate you opening up the subject of how Illinois has historically approached the Title Insurance and Title Agent market. In my fifteen years in this business -- you are the first person in a leadership role in Illinois to tackle what I called the 'Elephant in the Room'. I have a Ukrainian woman that has worked for me for 12 years-- she would say - "you opened the can of worms-- now you have to feed them".

For years has gotten stuck tackling the most egregious problems-- but it is nice to see someone looking at the root cause.

In reflection on your announcement document that I received two days ago -- what really stands out to me is that you focus ONLY on where Full-Service Title Agents are using the system unfairly to induce Attorney Title Agents. Maybe that's the easiest path for you to start driving change in our industry, but it is in my opinion this is only the very tip of the broken Title system in Illinois. In my opinion someone needs to address the root cause of a much larger broken system. I would argue that Illinois' Title Insurance market is polluted with fraudulent activity that in every case negatively affects the consumer with higher prices and less service - born exclusivity from incentives and leverage created by Illinois' Attorney Title Agent Program and the proliferation of Brokerage Owned Title Companies (Mortgage and Real Estate Brokerage Owned).

I don't expect my small voice will be the catalyst for change--- but I wanted to give you some bullet points to reflect on over the weekend because frankly it makes me feel better to share my frustration in hope that maybe you will listen. The attached list are rough thoughts I put on paper this morning-- I'm sure there are more things and the list needs to be cleaned up.

2/27/18

Illinois - Polluted Title Practices

Broker Owned Title Companies and Attorney Agent Program Inducement, Extortion, Collusion and Price Fixing

State of Illinois allows the Attorney Title Agent program in Cook and the collar counties to artificially "Price Fix" Title Insurance and Settlement fees at prices well above the State average.

State of Illinois enables Broker Owned Title Agents and the Attorney Title Agent Program to manipulate the Consumer with inflated costs and to Steer their business for profit reasons.

Attorney Title Agency Program:

- Creates a conflict of interest and forces Buyer/Borrower to pay fees to the Seller's Attorney (Simultaneous Loan Policy)
- Creates a conflict of interest for the Attorney who is now torn between making more money and properly representing his client.
- Forces both Buyer/Borrower & Seller to pay inflated fees for Title Insurance and Settlement Fees because in practice you have TWO title agents doing the same thing.
- Forces Buyer to use Seller chosen Title Agent services with both Attorney Title Agent and Full-Service Title Agent companies and give up equalized representation.

- Prevents the Buyer/Borrower & Lender from choosing their own Title Service representation, as is done in surrounding states like Wisconsin. (Bifurcated deals are frowned upon by Attorneys for obvious and fraudulent reasons, and historically frowned on by the State of IL)
- Allows [redacted] to establish Title Insurance and Settlement pricing for the Cook and Collar County markets in what becomes a "Fixed Price" market - vs a market driven price.
- Provides for standard Title Insurance and Settlement fees in the Cook and Collar County markets to be 2 to 3 times pricing one would find in Rockford and Springfield.
- Enables Underwriters to Steer a high percentage of Title Insurance business for their direct operations.
- Artificially allows Underwriters to force down the Title Insurance and Settlement fees for Refinance Transactions.
- Forces Small & Mid-Size Full Service Companies to avoid Refinance Transactions.
- In Theory has the Attorney Title Agent doing the Examination and Policy Approval, but in reality, all the Title work has to be done by the Full-Service Title Agent, because usually the Attorney Title Agent does nothing.
- In practice requires the Full Service to do the Search, Examination and Commitment & carry liability for title issues without receiving pay for those services.
- Forces Full Service Title Company to increase Settlement and Junk Title fees to cover the costs of doing Title Insurance services where most or all the fees are paid to the Attorney Title Agent.
- Forces Seller Attorney Fees down to below what a normal market driven price arena because the majority of the Attorney Title Agent compensation is primarily Title Insurance Fee.
- Misleads Seller because he is not aware what fees are being paid to his Attorney
- Enables Seller Attorney [to] be the hero to misrepresent what they actually get paid and to blame Full Service Title firm for high Title Fees. The system does not make the average parties aware of who is actually receiving those inflated Title Fees.
- Eliminates any checks and balances among Attorneys to guard against inflated title fees - because the Buyer Attorney is expecting the Selling Attorney to pay it forward when their chairs are reversed. Attorneys are choosing money over their clients' interest.
- Eliminates any checks and balances between Attorney Title Agent and Full-Service Title Agent because the Full-Service Title Agent is at the mercy of the Attorney Title Agent for future business.
- Is unique to Illinois. Nothing like this program exists in any other state in the country.
- [redacted] and other businesses are based on this absurd business practice

Real Estate Brokerages Owning Title Companies:

- Extort Attorney Title Agents to rent office space at above market prices for the privilege of being on the Real Estate Agents approved Title Agent List

- Extort Attorney Title Agents to give 100% of their business to the RE Brokerage owned full service title company if they want to be on their RE Agents approved Attorney list.
- Induce their Real Estate Agents to send business to their approved Attorney Title Agents, contingent on them using the RE Brokerage owned Full Service Title company, by paying them a higher commission split knowing they can make up the difference in title fees
- Induce their Real Estate Office Managers, Team Leaders, Administrators, and any W-2 individual financial incentives (bonus and commissions) to Steer Real Estate Agent business to the Real Estate Owned Title Company
- Steer their Real Estate Clients to a chosen group of Attorney Title Agents for financially driven reasons.
- Penalize their Real Estate agent that choose not to use their Real Estate Owned Title Company
- Force their owned Title Companies to add junk fees not normally found in a healthy competitive drive market.
- Collude with a select group of captive Attorney Title Agents to prevent business going to other Attorney Title Agents not in the captive group that could/would lead to business going to other Full-Service Title Agents.
- Force Attorney Title Agents to NOT participate in sharing Title Fees if they wish to receive business from their Real Estate Agents [redacted]
- Dictate to Attorney Title Agents what they make in Title Fee Split if the Attorney Agent wants to work with their Real Estate Agent Clients ([redacted])
- Steer Real Estate Agents to their Full-Service Title Company by customizing their Real Estate Agreement to create the obligation to use a specific Title Company before the Consumer often times even hires an attorney and always before they even know they have a benefit to choose their own title company

Attorney Title Agents Induce Real Estate Owned Title Companies by:

- Offering to rent office space at above market prices, space that they most often don't even utilize.
- Offering to give 100% of their business to the RE Brokerage owned full service title company for the opportunity to be on their approved Attorney Title Agent list
- Offer to give up Title Insurance Fees in order to get future business and settle with being paid only Attorney Fees - fees that they have to then increase to be at a more appropriate level for the work provided.

Attorney Title Agents believe:

- They are entitled to make a few thousand dollars more for their services because the Real Estate Agent makes Ten Times what they make.
- They should deceive their client into thinking the only fees they are making is the Attorney Fee they outlined in their initial retainer agreement - hiding the thousands they make from the title fees

Attorney Title Agents extort Full Service Title Companies by:

- Forcing them to increase the Attorney Title Agent split percentages, independent of that the Attorney Title Agent previously agreed to in the Attorney Agent's Underwriter Agreement (not applicable to FAT Attorney as they don't have Attorney Title Agents by definition)
- Forcing them to pay 100% of Title Insurance Fees to Attorney Title Agent [redacted]
- Forcing them to increase their title insurance fee pricing payable the Attorney over the market average and then look the other way. A typical process for some attorneys is to increase [redacted]'s rate card by 15-20% --essentially giving themselves a raise at their clients' expense.
- Forcing them to pay Later Date, Policy Update, Chain of Title and other fees normally paid to the full-service title company.
- Forcing them to add junk fees (e.g. Inflation Endorsement) payable to the Attorney and have them look the other way.
- Forcing them to add junk fees or increase Settlement fees to compensation the full-service title company after they have been forced to concede normal full-service fees income to the greedy Attorney Title Agent
- Forcing them to complete the examination and commitment and provide it in advance of the Attorney Title Agent having to review the normally provided search and blank examination form.
- Forcing them to complete the commitment and fill out the Attorney Title Agent examination form that only then needs to be signed by the Attorney Title Agent.
- Forcing them to waive Title Exception or change Settlement Best Practices to the whim of the Attorney Title Agent in order for the Full-Service Agent to maintain future Attorney Title Agent business
- Forcing them to waive or reduce Search Cost Fees normally billed to the Attorney Title Agent
- Forcing them to charge the Seller for Search Cost Fees normally billed to the Attorney Title Agent
- Forcing them to sign the Final Policies that Underwriters request to be signed by the Title Issuing Agent (aka the Attorney Title Agent)
- Forcing the full-service agent to handle ALL post-closing responsibilities.

Underwriters and Underwriter Direct Operations Induce Attorney Title Agents to sign up with them by

- Not requiring them to carry E&O insurance normally required) [redacted].
- Offering higher percentage splits
- Offering to pay fees normally allocated to the Full-Service Title Company
- Offering to waive CPL fees for their clients' closing with the Underwriters direct operations
- Offering them FREE access to on line search services and paperless desktop technology if they order direct through the Underwriter

Full Service Title Agents:

- Induce Attorney Title Agents by paying them a greater percentage split on title insurance fees, up to 100% of Title Insurance Fees (typical practice of [redacted].)
- Induce Attorney Title Agents by paying them on fees normally allocated to the Full-Service Agent (Later Date, Policy Update, Chain of Title, Etc.)
- Induce Attorney Title Agents by doing 100% of the Search, Examination and Policy work including filling out the Attorney Title Agent Examination Sheets on behalf of the Attorney
- Induce Attorney Title Agent by completing the documents normally completed by the Seller's Attorney - Deed, Bill of Sale, Prorations, etc. on behalf of the Attorney

Mortgage Brokerages Owning Title Companies:

- Force Loan Officers to use Mortgage Broker owned Full Service Title Company
- Are able to increase Refinance rates 2 to 3 times market average with a captive client
- Negotiate Loan Officer splits with commitment of LO to use Mortgage Broker owned Title Company

2/27/18 [Redacted] I am an attorney in Libertyville, Illinois. My law practice consists primarily of representing Illinois residents in the purchase and/or sale of residential real estate. I have attached the notice that I received from one of the title companies that I work with which led me to writing this email.

After reviewing the Proposed Regulatory Guidance, I felt compelled to comment as the focus of these guidelines have a direct impact on my livelihood. I would like to start by saying that I am not opposed to what I believe the intentions are with these guidelines; protecting consumers. I make a point of educating all of my clients as best I can in how the title industry works including but not limited to how I am compensated related to their transaction.

I believe the current approach and its focus on the split between title companies and their agents will not provide any protection to consumers and may harm consumers. If the split is reduced, the fees to consumers will simply be increased and already has been increased by many title companies.

If the intention for these guidelines is to provide protection to consumers, the focus needs to be on the fees that are charged; especially to Buyers because they're the ones (as a practical matter) with zero control over the fees that are charged to them. Sellers have a bit more control over these costs but they typically do not understand the business or process enough to exercise any degree of control over these costs.

I'd be happy to comment/discuss further if you're interested and it is my understanding that at a minimum one of the title companies that I work with is preparing a response consistent with this information. I think it's also worth noting that there are more significant problems that pose a greater risk to consumers based on affiliations between title companies and real estate agents as it creates a conflict of interest and the damages to consumers as a result of such conflict in many cases cannot even be determined.

I thank you for your attention to this information.

Have a nice day,

3/12/18

RE: Comment [redacted] Regarding IDFPF Guidance on Title Agent Compensation

Dear IDFPF,

I offer this comment in response to the Illinois Department of Financial and Professional Regulation's "Proposed Regulatory Guidance Title Insurance: Title Agent Compensation" (hereinafter "Guidance") published on December 15, 2017.

I am concerned about the market practices cited below. These practices are increasingly prevalent throughout the Chicago metropolitan market. These practices stifle competition and negatively impact consumers.

Real Estate Broker Captive Programs: Use the Captive or He Blacklisted

As a practicing lawyer: I am concerned about the increasing number of uncompetitive arrangements that implicate certain real estate broker-controlled title businesses in the Chicago area. These arrangements negatively impact the industry, practicing lawyers and the consumers we serve. Illinois is an "attorney state" where home sellers and buyers routinely hire lawyers to represent their interests in real estate transactions. Often, a seller or buyer will rely on his or her real estate agent to recommend a lawyer. Real estate agents are in a position of trust, and consumers (most of whom are bewildered by the process) look to them for guidance. Realtors® have the first contact with the consumer and have significant influence over that consumer's choice of loan and settlement services. In Illinois, the seller selects the title insurance provider as the seller has the contractual obligation to provide title insurance to the buyer. Historically, lawyers wrote "title opinions" for their clients to evidence marketable title. Today, the law firm that represents the seller usually provides title services for the transaction.

In recent years, several large real estate brokerage firms have developed captive title agencies as an additional revenue source. In order to capture market share, it has become common practice for some Realtor captives to mandate that lawyers use the broker's captive title agency in exchange for the lawyer receiving referrals of legal business from that brokerage. If the lawyer refuses to comply, that lawyer is blacklisted and the referrals disappear. If the lawyer agrees, the flow of clients continues. Many of these brokers maintain lists of "Approved Attorneys," a euphemism for those willing to refer back the title work.

These practices grow every day. I am regularly contacted by Realtor captives who threaten to blacklist me if I do not agree to steer all or most referred clients to the captive title agent or in some cases to split title fees with the salesperson.

This broker-controlled business scheme described here is a growing threat to the integrity of the real estate transaction. Many lawyers are forced into a compromising situation because of their significant dependence upon the broker's referrals, which are needed to maintain a sustainable real estate law practice. Many lawyers feel compelled to enter into

the referral arrangement with the broker and the broker's captive title company. A real estate transaction is the largest financial investment of a consumer's life. Counsel for these consumers should be free to act in a manner that is solely in the best interest of these consumers who are their clients.

Pricing and Junk Fees

I have similarly seen a dramatic increase in Junk Fees' by some title companies and agents. These are fees that are not only confusing to consumers, but quite often they do not bear a reasonable relationship to risk or to the cost of production. Example of these fees include [omitted by writer]. Often the collective add hundreds of dollars to the settlement costs. The paramount goal of RESPA is to give consumers meaningful disclosure of costs. When fees are obfuscated by nonsensical or duplicative charges, the purpose of the attorney is compromised.

We look forward to working with you on these issues.

3/14/18 Thank you in advance for your consideration in addressing these possible violations of the Real Estate Settlement and Procedures Act and/or the Illinois Title Insurance Act. I am a title insurance agency owner underwritten by multiple title insurance companies and I fear for the very existence of my agency due to the lax enforcement by the Department of Financial and Professional Regulation.

I believe in operating a compliant shop and working with attorneys that share the same values. The Chicago market has been spinning out of control from some time and the ills of title insurance industry are no longer being hidden.

[Redacted] have chosen not to pursue claims against the attorney agents that participate in their programs, how do I compete for attorney agents that have liability if they work with me? You addressed pricing concerns, whether premiums or fees, but what about liability? If an attorney earns \$2500, whether the use my agency for settlement services or that of [redacted] there appears to be a level playing field. This is not the case, as they are only liable for their determination of insurability, if they work with me.

I have an 85% split with all of my underwriters, but I am unable to compete with the amounts that even my counterpart agencies are offering. I've reviewed numerous closing disclosures of my competitors and either they are paying the attorneys revenue generated from the settlement services or they are remitting less premium to the underwriters on their behalf. Either way, these are violations and should be enforced.

[redacted]

3/14/18 As a practicing real estate attorney for more than 26 years, I offer this comment in response to the Illinois Department of Financial and Professional Regulation's "Proposed Regulatory Guidance Title Insurance: Title Agent Compensation" (hereinafter "Guidance") published on December 15, 2017.

I am now, and have been for many years, concerned about the practices taking place in the residential real estate market. As my office has been in Chicago for the past 26 years, I am very familiar with these practices and have watched them get worse throughout the Chicago metropolitan market over the past years. Not only do these practices stifle competition and negatively impact consumers, but they keep attorneys from being able to act in the best interests of both buyers and sellers of real estate.

I started my own law practice in 1992 and immediately began concentrating on residential real estate closings. At the time, I knew a number of real estate agents, both personally and professionally, and they were all happy to refer me their clients knowing that I would represent their client's best interests. Over the following 10 or 12 years I grew my practice by meeting new real estate agents, mainly at closings, who saw that I represented my clients well and they felt comfortable referring their clients to me. I felt that I was doing a very competent job representing the best interests of my clients, and the real estate agents did as well because the referrals kept coming. At that time, the only question that I ever received from a real estate agent about title insurance was "what title company are we closing at?"

I am not exactly sure what year it started to change, but I remember being asked by a realtor that I had worked with for many years, if I would become an agent for the title company that her office was affiliated with. I let her know that I had a certain title company that I worked with for many years and felt that I could best represent my clients by continuing to use that title company as we had a great working relationship. I further explained that my main objective was to get the transaction closed for my client. This was my first exposure to realtor owned "captive" title companies. Over the next couple of years, the same question was posed to me by the vast majority of real estate agents I was working with. When I explained to them that I felt it was in the best interest of our, the realtor and my, clients to work with the title company I felt would do the best job getting the transaction closed, most realtors agreed and understood. Shortly thereafter, I was told by a number of the realtors that I was working with that their companies wanted to "help me" get more clients and that they would add me to their "Preferred Attorney List" as long as I agreed to use the title insurance company affiliated with (or owned by) their office. I again reiterated that I would be happy to represent their clients but felt that it was in the best interest of the client to use the title company I had a solid working relationship with.

Over the next four to six years, the referrals from realtors who worked for real estate companies that had "captive" title companies, and had for many years referred me their clients, dropped off significantly. I asked a number of them if they felt that I had not represented their clients well as I could not pinpoint a particular deal, or instance, that stood out as having significant issues. One realtor who had referred me as many as 70 transactions per year was honest with me and said he was a "company man" and that his company wanted the attorneys using its captive title company or the attorney would no longer get referrals, or in essence be "Blacklisted". It has now been more than 4 years since I have received a referral from that agent, or any of the other agents that work for that company with whom I used to work with on a routine basis. In fact, I am now working with 80% fewer real estate agents than I was working with before I was "asked" to join their captive title companies.

As a practicing lawyer, I truly believe that a person should be represented by an Attorney when buying or selling real estate. For most people, the Purchase or sale of a home will be the largest financial transaction of their life. Real estate agents are in a position of trust, and consumers (most of whom are bewildered by the process) look to them for guidance. Realtors® have the first contact with the consumer and have significant influence over that consumer's choice of loan and settlement services. Most often, a seller or buyer will rely on his or her real estate agent to recommend a lawyer. I understand that in many states people do not use attorneys in residential real estate transactions. I also know that I have had a significant number of clients who have moved to Chicago from other states and feel so much more comfortable having an attorney represent them. Similarly, many of my clients who have moved to "non-attorney" states have called me with questions when buying or selling real estate in those states as they have no one looking out for their interests. If we allow the uncompetitive practices of the real estate broker-controlled title businesses in the Chicago area to continue, the consumer will no longer be able to get un-biased legal representation. Many lawyers are forced into a compromising situation because of their significant dependence upon the broker's referrals, which are needed to maintain a sustainable real estate law practice. I was lucky that I had already diversified my business before the referrals stopped but there were many attorneys who either had to "sign up" and look after the best interest of the realtor instead of their clients or stop doing real estate closings for a living.

In addition to the issues discussed above, the skyrocketing price of title insurance and related fees over the past 10 years has been unconscionable. The title insurance companies are all competing with each other for agents and "offering the moon" to steal agents from each other. I receive numerous calls each week from title companies offering me crazy "splits" and other incentives to use their company. The percentage of the premiums being paid out to agents is absurd and surely cannot allow the title insurance companies to keep enough of the premium to cover their risk in issuing the title insurance policies. All of these costs are passed on to the consumer. Some might argue that it is the "greedy" lawyers causing this problem but they are just receiving the splits offered by the title companies. The lawyers have not influenced the title companies pricing structure. If the title insurance companies, on their own, cannot determine the fair costs for title insurance and other settlement fees, commensurate with the risk they take for issuing an insurance policy, and closing a real estate transaction, someone needs to step in and do it for them. Ten years ago, when a buyer would ask me to estimate how much money they would need for closing, I would use \$1,500.00 for the Buyer's title fees, including the closing fee and lender's policy. Today I estimate \$3,000 for the same products and services. I am embarrassed when I have to go through the title charges and "Junk Fees" with a client at closing and cannot even justify why the client has to pay them. The explanation that "all title companies charge the same fees" doesn't really sound very professional and in the end the client pays them to get the deal closed.

I apologize for "venting" about these issues but I feel strongly that buyers and sellers of real estate should be represented by an attorney. I also feel that should be able to use an attorney of their choosing regardless of which title insurance company the attorney uses. Finally, and probably most important to the consumer, they should only be paying settlement fees commensurate with the goods and services they are receiving. Not based on title insurance company's crazy schemes to gain market share by offering ridiculous splits to agents and therefore passing along the costs to the consumer.

Please feel free to contact me with any questions and I look forward to working with you on these issues.

3/19/18 Just reporting my views for the record; I have attended both Town Hall meetings and I thank the Department for giving us the opportunity to be heard. I truly hope that we can keep the conversation going until we arrive at a real solution of the issues.

We all work hard and believe in professionalism and ethics to keep our industry healthy on all fronts; first and foremost, the consumer's best interest must to remain front and center.

Please allow me to put it in bullet points for simplicity and clarity:

- Attorneys must be in the transaction
- The consumer is questioning the title insurance charges as they keep rising
- Recent surveys by ALTA and others continue to show that over seventy-five (75) percent of consumers have no clue of title insurance or what it covers. That is until they get to the closing table and here comes the big number. More information to the public on a regular basis is just the beginning
- Our unique set up in Northern Illinois combines fees that normally would appear as separate charges
- A Closing Disclosure needs to be as clear as a grocery store receipt: line-items only with a price next to it
- At some point – hopefully soon – we will have title insurance charges reflecting only the actual cost of the title policy
- All third-parties-providers in the transaction to invoice for their specific – and only - services
- At that point any consumer will be able to see for themselves what they are paying for thus eliminating any all misunderstandings

3-20-18 [Redacted] submits this commentary in response to the requests made by the Department in the "town hall" conferences held in January and March, where the problem of escalating closing expenses to consumers was discussed. Many of our attorney-members have weighed in with us, and one thing appeared clear to the lawyers in attendance: the Department has begun its inquiry into the problem from the erroneous conclusion that attorneys acting as title agents are causing higher consumer costs. We all agree that costs to consumers are too high. [Redacted] a bar-related title agency which advocates for the role of attorneys in residential real estate transactions, has also been in the vanguard of the critics of "junk fees" which have proliferated and escalated for quite a long time now. However, the observation that costs are higher in northern Illinois than in other locations does not imply that lawyers are the cause of the higher costs.

The Department representatives related personal anecdotes of solicitations from real estate lawyers who charge small or non-existent legal fees, presumably on the expectation that the main source of revenue for their legal and title services will be their split with the title company. It was also represented that smaller non-lawyer title agencies have encountered lawyers who demand higher splits than are warranted as a condition of signing up with the agency. From these examples it is inferred that the source of the problem is that attorneys undervalue their legal services and deliberately do not charge sufficient fees for their legal representation of consumers in transactions, with the expectation that their professional activity will be made profitable through the revenues generated by agency title fees.