



# State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

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## **Office of the Commissioner of Insurance Title Advisory Council**

**Minutes**  
**Friday, February 15, 2008**  
**9:30 a.m. – 12:30 p.m.**  
**125 South Webster Street**  
**Room 227**  
**Madison, WI 53703**

Council Members Attended: Thomas Rostad (Chair), Dane County Title; Lemuel Eton, Metropolitan Milwaukee Fair Housing Council; David Silberman, Stewart Title; Jean Plale, Department of Financial Institutions; Sona Olson, Olson Reality; Ron Steinhofner, M&I Bank; Linda Marincel, Royal Credit Union; Joe Theisen, Fairway Independent Mortgage; and Michael Turney, Langlade Abstract and Title Company. OCI Representatives Attended: Commissioner Sean Dilweg, Deputy Commissioner Kimberly Shaul, Jennifer Stegall, Bob Luck, Katherine Otis, Sue Ezalarab, Rhonda Peterson, Eileen Mallow, and Mary Reines.

Others Present: Ellen M. Wagner, Wisconsin Land Title Association; Karen Gilster, Wisconsin Land Title Association; Tom Cullen, Title Guaranty Fund; Jackie Bartaczewicz, Title 100; Kathleen Martello, Title 100; Tony Langenohl, Capitol Consultants; Jeremy Shepherd, Wisconsin Bankers Association; Mike McDonnell, First America Title; Cheryl Shaw, Burnet Title; David Gander, Heritage Title; William Black, DRL; Kevin King, WRA, Kate O'Keefe, Land America; Lisa Petersen, Chicago Title; and Pete Christianson, Quarles & Brady.

### **I. Introductions**

### **II. Interplay of Wisconsin Chapter 452 (Real Estate Practice) and Title Insurance Companies**

Bill Black, Legal Counsel to the Real Estate Examining Board

Highlights from Mr. Black's presentation are as follows:

- Realtors are regulated by the Department of Regulation and Licensing (DRL).
- The Department Administers Chapters 452 Wisconsin Statute and RL24 Wisconsin Administrative Code.
- In the last ten years, DRL has not disciplined a broker for choosing a Title Insurer for a consumer. Chapter 452 was updated in 2005-2006.

- One caveat is the title issue applies to FSBO (For Sale by Owner) as well as realtors, however there is no regulatory authority over the FSBO.
- Duties of the Broker – client has the right to know fees and other costs of the realtor.
- A failure to disclose fees results in a negative reflection on realtors in general. Affiliated business arrangements are in a position to refer business to realtors. Additionally, clients need to be notified of their options for title insurance. The buyer and seller can be represented by the same broker. At the same time respecting client confidentiality.
- The largest area of complaints relates to individuals thinking their broker is keeping something from them. Often, it is just miscommunication. DRL will soon start the process to re-write the self dealing section of the administrative code
- Self dealing section of the rule has two situations:
  - Disclosure and getting consent.
- Disclosing interest in: real estate, bank, the title company, and the attorney to person. DRL regulates that this should be done but not how it should be done. Currently DRL does not regulate compensation between sales personnel and the brokerage firm.
- The department is moving towards addressing the issue on how to keep appropriate disclosure between the Broker, Client and Sales Person. Change in statute on how real estate transactions occur.
- Forms WB- 1 and WB – 36 were rewritten recently to protect the consumer. Forms committee is meeting currently. If anyone has suggestions, it would be good to submit them to Bill or the Forms Committee.
- Consumers are generally not educated on the broker or title insurance process(es) prior to the sale closing.
- Capture rate – department intends to look at the issue.
- The forms committee is meeting every other month. The next meeting is in 6 weeks. The information is available on the website.

#### Comments from the Council:

- Sona Olson: She is not in an ABA but works with companies that are. There is a disclosure form letting the seller know their relationships.
- Lemuel Eton: People do not have a choice. Disclosure is provided indicating that a broker has a relationship with the Title Company and then sends the person there, with no indication that there is a choice.
- Bill Black: DRL does not regulate the compensation arrangement between salesmen and Title companies.
- The Council asked if DRL has developed a form or if HUD forms were adequate.
- Mike Turney: The functions leading up to giving information to the Title company is governed by DRL. The concern is that there is no accountability. The agency does not have pro-active enforcement activities.
- Tom Rostad: Would you consider looking at requiring a salesperson to provide disclosure to a consumer that he or she is receiving money as a result of a referral to the title company.
- Bill Black: Yes, we are looking at re-writing this now and can consider.

### **III. Wisconsin Realtors Association Presentation**

Kevin King, General Counsel for the Realtors Association

Kevin King presented on the Realtors Association framework. He also gave an overview on the relationships of: ABA's, Brokers, and Realtors respective to the industry. Below are some comments highlighted in the presentation:

- As an industry, ABA's like choice for the brokers and consumers.
- The Association understands the need for consumers to make an informed decision. Members get a monthly legal update to keep realtors educated. This also helps with informing consumers.
- Some people desire a one stop shop for realtor, broker, mortgagor, and title insurance. An ABA provides this.
- It is important to respect a consumer's need to understand available options and make decisions.
- There are different motivations and incentives for brokers.
- Brokers that have ownership, stress the importance of forms and disclosure of information.
- Brokers are supposed to disclose to consumers the range of prices for title insurance in their area.
- Details of enforcement versus the appropriate requirements.
- The question of whether a broker should disclose compensation received for sending a person to a specific title company is always an issue.
- RESPA doesn't allow compensation to a broker for transferring a consumer to a Title Company.

Comments from the Council:

- Lemuel Eton: Does not think disclosures are the end all be all for the consumer. Disclosures are not always explained properly to the consumer.
- The State of Washington requires disclosure of costs in an area via a website. The consumer then has to choose their title company, print documentation reflecting their choice and sign it. All Title insurers have the opportunity to post price.
- Ellen Wagner: Sees more of a penalty to the Broker for not using a specific Title company. She referenced this as a possible violation of RESPA.

### **IV. Perspectives on Affiliated Business Arrangements (ABA)**

David Foster, Fulbright and Jaworsky (Representing Stewart Title)

Ronald Blintenthal (participating by phone)

David Foster gave an objective overview of ABA's from the perspective of the Controlled business or DBA. Mr. Foster also gave some background on the Real Estate Settlement Procedures Act (RESPA) (1983), Regulation X (1992), and HUD (1996). In the matter of ABA's, the consumers' process is uneducated and there is reverse competition. He also gave information on HUD and federal disclosure. The following are comments he highlighted in the presentation:

- RESPA resulted because Congress felt consumers found closing procedures confusing.
- Referrals can occur if there is a kick back.
- .
- In 1996, the Housing and Urban Development Department (HUD) issued a policy statement of their enforcement intentions. HUD feels the law should indicate that if an individual follows 1983 rules, the following are not considered dispositive: (a) a Sham if an ABA meets the 1983 guidelines, thus having sufficient capital net worth to operate and (b) the office is staffed with owners or employees and manages its own affairs or parent company.
- Details on HUD
  - See website – HUD.gov for more information on HUD’s position on ABA’s.
  - Examples of HUD’s position – are generally ambiguous.
- Specifics on a case with HUD- settlements with 1<sup>st</sup> American Title from Florida that shut down an alleged ABA – in the terms the party agreed to:
  - Future ABAs will have sufficient capital and conduct all services in the marketplace;
  - Manage own affairs;
  - Agent has a separate physical address with entrance and signage;
  - ABA will provide fair market value;
  - Only one employee – no shared employees;
  - Licensed and experienced employees in title insurance with knowledge on how to examine.

Ronald Blintenthal:

- A lot of complaints coming in from competitors of companies setting up ABA’s stimulated HUD’s engagement in the issue.
- RESPA allows for ABA’s to operate.
- MN is starting its third year of investigations into ABA’s. There were people working at the MN Department of Commerce who did not think you could have a legal ABA.
- MN is looking at how these actually operate. Are they competing in the marketplace, and do they have employees?
- A MN investigator has gone to an ABA with six title names on the door and one employee at the desk who is also an employee of an underwriter.
- The insurance code is sparse in MN. MN has looked at licensure requirement for insurance agents. In the case of real estate agents, MN is taking the position that they should be licensed as Title agents because they are soliciting insurance for a particular provider under ABA’s.
- First American Title paid a large fine in Minnesota and 35 ABA agencies have been shut down. The state determined they were sham related ABA’s.
- MN believes they are leveling the playing field for those that do not have ABA’s as well as protecting the consumers.
  - Minnesota worked directly with HUD – states generally have to have a statute to enforce RESPA to enable them to enforce the federal rule.

Comments from the Council:

- Would like to follow the Florida settlement.

- Ellen – no guidance on RESPA regulations. Required use – can reward own employees but not the realtors. It would be interesting to know the states who have enforcement under RESPA.
- Would like to look at MN enforcement.
- There have been a lot of complaints – 3-4 times in the last years from both competitors and consumers.

## **V. Title Exam Discussion**

Sue Ezalarab, OCI

The current Title exam has not been updated in 10 years. The exam has 35 questions specific to Wisconsin laws and regulations. The Colorado exam has two parts. There are 35 general knowledge questions and 40 state specific questions. Sue provided the Colorado outline to the council members for review and asked for feedback.

Comments from the Council:

- Tom Rostad – WTLA – Wisconsin Title and Land Association
  - Develop content outline for the exam from the current title exam
  - Avoid claims in the exam.
  - Agent license to point of sales is important
- Florida is requiring exam and CE
- Michael Turney – Licensing discussion will be a topic for one of these upcoming meetings. He thinks most ABA's are in violation of current code.
- Sue Ezalarab will provide the Florida exam outline.

## **VI. Other Business**

Next meeting

The next meeting will be held at Dane County Title Directions will be e-mailed. 10:00am start time.