



State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Jim Doyle, Governor
Sean Dilweg, Commissioner

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Office of the Commissioner of insurance Title Advisory Council

Minutes

Thursday, June 19, 2008

10:00 a.m. – 12:00 p.m.

901 South Whitney Way

First Floor Reception

Madison, WI 53711

Council Members Attended: Thomas Rostad (Chair), Dane County Title; Lemuel Eton, Metropolitan Milwaukee Fair Housing Council; David Silberman, NOVA Title Agency; Jean Plale, Department of Financial Institutions; Sona Olson, Olson Realty ; Ron Steinhof, M&I Bank; and Michael Turney, Langlade Abstract and Title Company.

OCI Representatives Attended: Commissioner Sean Dilweg, Jennifer Stegall, Bob Luck, and Mary Reines

Others Present: Kate O'Keefe, Land America; Jim Marlin, Tigor Title; Chad Armstrong, Preferred Title; Kathy Martello, Title 100; Ellen Wagner, Wisconsin Land Title Association; Tom Cullen, Attorney's Title; Karen Gilster, Wisconsin Land Title Association; and Lisa Petersen, Chicago Title

I. Tour of Dane County Title

Tom Rostad, Chair

II. Approval of February 15, 2008 Minutes

Tom Rostad, Chair

The Council approved the minutes.

III. Title Insurance 101

Lisa Petersen, Chicago Title

Lisa Petersen gave an overview of title insurance forms during real estate transactions.

In a real estate transaction one of the first documents received is a Title Commitment document, usually between the realtor and the insured/ purchaser. There is the need for a property search of the property and documentation of the history of the real estate. The title company looks for all the information and how any information on the property could impact the title or could impact the buyer of

the property. It is important to review documents in the clerk of courts and review the actions that affect real estate. Some items to review at the clerk of courts include: need to order for sale, foreclosure issues or probate, divorces, lender requirements, bankruptcy records, tax warrants, child support outstanding and liens on the title. The treasurer's office will have information on: tax maps, tax issues, and if there are any delinquent taxes on the property. Once the deal is finalized the documents are drawn up for review. The title insurance policy is put together (3rd page of the handout). All forms are national and the jacket to the policy looks exactly the same. There are two types of policies – owner and lender.

Additional terms and form variances Lisa Peterson discussed:

- Title Vesting – makes sure the buyer is the required deed owner and properly informed of the property details.
- Newer version in 2006 – adopted a more user friendly version to educate consumers on the title insurance policy and property details. This newer version discussed the following specifics: defects on property, deeds, easements, court documents, lawyers, brokers, lenders, and realtors that all can do closing. Section (i) states to look for forgery on the title. The largest amount of claims in the last year (\$25-30 million) due to forgeries. Section (ii) is about who actually has the authority to sign the deed. Section (v) was updated to note caution on “power of attorney” in the real estate transaction, as the original power of attorney is required to be covered by the title insurance. The industry has seen claims due to the result of invalid power of attorneys listed on the title. Section (vii) was updated to help title holders understand court actions and know how they impact the title of the property.
- Marketable title – this is the ability to insure the title is good, not on the condition of property.
- Access- need to specify access to the property – such as easements, street access, fire department lines, etc. If the title agent misses this or a mortgage lien or other covered perils, then the policy covers these losses.

Questions and comments from the council:

- How often does the national association redo the title form? This is not done very often. The last time it was reviewed and redone was in 1992. The national association is voluntary participation.
- The policy is geared to be consumer friendly.
- The major forgeries on mortgages can be done on both the sales and buying side, so it is not always to catch this issue.
- Claims are on the rise, but the industry is trying to educate the consumer to reduce claims.

IV. Minnesota Commerce Department Activity Related to Affiliated Business Arrangements (ABAs)

Paul Hanson, MN Commerce Department (participating via conference call)

Exams currently done in Minnesota are focused on ABA's. This started with First American Company. They had 30-40 joint ventures and referral partners with various violations. First American has had their ABA's revoked and now have to pay restitution as part of the penalty. Additionally, licenses were revoked. It was determined, during the exams, the fees were collected from lenders, but the company kept the title work, and never appeared to have completed the underwriting. ABA's failed to make disclosures as well and had improper licensing issues.

Some of the concerns the MN office had started with captive title insurance situations raised in Colorado and also the kickbacks identified in the business. The state found locations with the same license. Agents admitted making sure customers did not take business elsewhere through the kickbacks arranged. This impacted prices in the market place. Kickbacks were the exchange of a service for the value of the service. It is a very gray area because all businesses engage in different promotions. One example was a business admitting clients threatened to take business elsewhere unless cash was exchanged. The concerns Minnesota has with kickbacks include rebates and cash exchanges for thousands of dollars. Lunches, dinners, and theater tickets are not the problem from the state's perspective. Minnesota is going to work on legislation to prohibit rebating and kickbacks that go over the top, such as trips to Vegas. The legislation is not going to look at minor amounts, because if \$25.00 is determined to be okay, then why not \$100.

Questions and comments from the council:

- Would the legislation use general market conduct exams to monitor legislation? Realtors, brokers, and title companies are all involved in title insurance, which creates a large scale of issues for the state to track. Exams cover the consumer who is on the front of the transaction. The belief is that underwriters are responsible for the title company. Yes, market conduct exams would be used to monitor legislation. If real estate agents, brokers solicited business to insurance then the state can subpoena them for the case if one is necessary. The state would review model producers and voluntary purchases. The state is going to take a position that the insurer must have a license to provide insurance to an individual.
- How is Minnesota flushing out these businesses? They are using a database to searching by address. When they find 4-5 companies at one address then they know there probably title defalcations and try to bring forward charges of both civil and criminal. In one office they found multiple title companies but only staff of 5 or 6 examiners.
- In reference to HUD and RESPA – will Minnesota statutes incorporate these? The legislation will cite their rebate statute rules. Minnesota has good relations with HUD in both the local and federal offices.
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- They are looking at agent licensing as well the issue of multiple licensing.
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- The issue of net worth and looking at brokers who had no established capital, is this being considered? There can be significant exposure to losses if you get in business with nothing, it generates hyper competition and creates ethical challenges.

V. Discussion on Title Issues Related to Foreclosures

Sean Dilweg, OCI Commissioner

Commissioner Dilweg mentioned some of topics on title insurance that could be impacted due to the current mortgage crisis issues and foreclosures in the real estate market.

- Affiliated business – obviously these are not always easy to understand or obvious to make sure they fall under proper regulation. The council can make a difference by laying out the relationship and understand other issues. Panel discussions would help to determine issues and brainstorm ideas. There is concern customers lack a right of choice. OCI would like to put together panel discussions with ideas and present to the council for input to ensure balanced representation of the market place.
- Licensing – should this be reviewed to be on an individual or agency basis. People can easily obtain a license. Does this process need to change to prevent fly by nights. Also do realtors need to be licensed?
- Agent versus Agency – In Wisconsin, just an individual has to be licensed. It would be beneficial to have expertise from industry and OCI to discuss.

VI. Other Business

Tom Rostad, Chair

ABA's are not evil, just need to be on a level playing field. The council is concerned with the abuses that have the potential to occur.

Example of a rising issue in the industry:

With foreclosures on the rise, the consumer and realtor need to be careful. Recently at a foreclosure auction, there were \$1,200 - \$1,500 in title charges and closing costs to the buyer. By the time the transaction was completed, there was an estimated \$2,300 in settlement charges because the buyer had to use the auction's contracted title company and real estate company. The language was in fine print once the contract was signed at the auction and the customer did not have any options to use the title insurance of their choice. The customer ended needed to pay for both the auction's title insurance and their own title insurance. In addition to the increased title insurance costs, the buyer did not have an option

to select a title insurer. Additionally, not all title insurance companies are going to conduct the search work the same or handle the policy the same.

VII. Next Meeting
November 14, 2008