

Title Insurance Advisory Council

05/09/2011
2:00 PM
Division of Insurance
1560 Broadway, Room 850-B
Denver, CO 80202

Council members present: Margaret Cook (Chair), Diane Evans (Vice-Chair), Bo Edwards, Eric Morgan, George Sutherland, Bob Howe, Gary Hostetter, Pat Rice, Tim Killcoyne, Kevin Chiarello, Bill Brendemuhl, Rich Jones, Curt Fix, Cindy Compton (for LTAC).

Not present: Neil Gulley.

Minutes

Administrative Matters

Discussion:

The meeting was called to order at 2:05 PM.

Introduction of Director of Market Regulation

Discussion:

Jeri Brown was introduced as the new Director of Market Regulation. She discussed her background, which included working for the legislature in Maine, serving as a deputy insurance regulator in Maine, working as in-house counsel for Guaranty National Insurance Company, for a compliance software vender that is now owned by Commerce Clearing House, and for a subsidiary of Liberty Mutual.

Upcoming Staff Changes at the Division of Insurance

Discussion:

Andy Helm announced that he had resigned from the Division of Insurance effective May 31, 2011. Christine Nelson will be assuming his duties as the liaison to TAC from the Division of Insurance. Andy asked that the minutes be prepared by a member of the TAC instead of by Christine. The DOI will continue to record the meetings.

The Division will post an ad for a replacement of his SB249 in the next 3 to 4 weeks.

Approval of Minutes

Discussion:

Bo moved to approve the February 14, 2011 Minutes. The Motion was seconded by Bill, and passed unanimously.

Update on Revisions to 3-5-1 FAQs

Discussion:

Andy amended his FAQ on Question 13 to clarify that the rules on generic exceptions apply only to purchase transactions. Generic exceptions are still allowed in refinance, junior liens, and lines of credit transactions.

The FAQ on Question 5 was also amended to clarify that the charge for a TBD Commitment must be made at the time of delivery, not 90 days after delivery.

The changes have been posted on the DOI's website.

Report from Subcommittee Regarding Potential "Titling Over" Bulletin

Discussion:

Andy had mentioned during the last meeting that the Division was considering a bulletin on "titling over" (issuing new policies without taking exception to an impairment as a method of settling claims).

Margaret reported that the subcommittee had met on three occasions to discuss the issue. After reviewing the relevant statutes and regulations, the subcommittee came to the consensus that it is the obligation of the lender to release a Deed of Trust that has been satisfied. Agents and underwriters do not have a statutory obligation to file an underwriter's release when the underlying indebtedness is satisfied. There are inherent risks involved when underwriters file releases, and lenders may absolve themselves of the responsibility altogether if the burden were shifted to title agents and underwriters. Underwriters should make their own decision on whether to file a release of a prior Deed of Trust.

Some consumers have the misconception that it is the title company's responsibility to obtain a release. There may be a need for consumer education, or perhaps a disclosure, on that issue.

As to underwriting requirements, an unreleased prior Deed of Trust that has no expired should be disclosed on the Title Commitment. An underwriter may agree to insure over or delete the prior Deed of Trust based on receipt of evidence of payment, an indemnity letter, or sound underwriting practices.

There are already laws in place to ensure that services are performed for fees that are charged at closing. Title agencies that charge release tracking fees must perform those services or refund the fees. This may be an area where a bulletin could be helpful.

As to claims handling, an underwriter must honor its contractual obligations in the policy. A title insurance policy is a contract of indemnity against actual loss suffered. It is not a guarantee of an abstract of title.

To open the competition in the marketplace, the subcommittee has decided to work on a Mutual Indemnity Agreement between underwriters.

Other options discussed were to increase the statutory penalties against lenders who fail to timely release their Deeds of Trusts, and potentially adding a disclosure to Title Commitments informing consumers of the lender's obligation to file a release. Neither option is being pursued at this time.

Bo added that a good part of our discussion did focus on the mutual indemnity agreement and on the title insurance contract itself. When a prior item is insured over, an underwriter may have an obligation to pursue a release if it affects marketability. A brief discussion of salability vs. marketability followed.

Mortgage Assurance Relief Services Rule (MARS)

Discussion:

Andy Pankonin provided a brief summary of the MARS Rule, and discussed the potential impact on title agencies that provide short sale assistance. The FTC does not generally give official guidance on their rules. ALTA's regulatory counsel suggested that Footnote 108 seems to imply that if a title entity provides core title services and traditional escrow and settlement services, nothing more, that the MARS Rule does not apply. If the title entity takes substantial steps in the short sale process beyond those services, they could fall within the MARS Rule. The MARS Rule could conflict with State laws regarding charging for services provided.

Cindy and Kevin added that MARS applies to "anyone who does something for the consumer that stops a foreclosure." Is requesting a payoff demand something that stops a foreclosure? Some companies require an upfront fee to start processing a short sale order, but the fee is not for the entire short sale processing. Is that lawful under MARS? Can a title entity charge an upfront fee for a TBD Commitment in a short sale file? It is not clear whether the MARS Rule applies to title entities, and there is a potential for conflict.

DOI Enforcement Trends

Discussion:

Andy reported that they have seen a few complaints about not charging for TBDs in the past quarter. The Division has also run into questions regarding licensing. Title examiners and sales representatives must be licensed. Closers do not have to be licensed, but it is preferable so you have knowledgeable closers. With agency closings, underwriters should talk to their agents about file retention. The Division prefers not to store the files. Files should be turned over to the title underwriter or to another agency, but the DOI should be apprised of the location of the files.

Market Conduct Exams

Discussion:

Christine will have no news to report until a final agency order is entered. This item will come off the agenda temporarily.

Update on LTAC's Legislative Efforts

Discussion:

Cindy provided an update on the Transfer Fee Bill (SB 234) sponsored by LTAC. SB 234 passed and has gone to the Governor for signature. Colorado will become the 28th state to pass a ban on private transfer fees.

Other bills of interest to LTAC:

HB1313: This bill would continue the \$1 surcharge on recording. LTAC testified on behalf of the bill.

SB253: This bill would expand HOA registration to pre-CCOIA associations. Right now, only post-CCOIA HOAs must register. LTAC has some concerns about some of the information that would no longer be mandated.

Other Business:

Discussion:

Diane recently attended the ALTA Small Agent Meeting. They discussed a recurring problem in some states in which REO companies are using loan servicers to close their transactions. Small agents provide a written title commitment or report to the loan servicers. Loan servicers then cancel the transaction with the small agent, but then provide the report and refer the business to a less expensive national title company.

Diane recently attended the Iowa Land Title Association meeting. A representative from the Real Estate Section of the Bar thanked the industry for keeping title insurance unlawful in Iowa, and then asked for the association's continued support for a centralized system to record mechanic liens. The Bar wants a centralized system that would be easier for them to search than the county land title records. The Bar also refused to provide a copy of the BAR's Title Standards to title abstractors. It was a condescending presentation.

Margaret reported that the subcommittee has started to discuss potential legislation to increase consumer protection. Possibilities include a consumer protection fund, seller protection letters, brick and mortar requirements, in-state producer requirements, increasing statutory requirements for fidelity or theft insurance. The subcommittee intends to continue those discussions.

Adjourn

Discussion:

Kevin moved to adjourn the meeting. The Motion was seconded by Bo, and unanimously approved. The meeting was adjourned at 3:15 PM.