

Title Insurance Advisory Council

02/14/2010
2:00 PM
Division of Insurance
1560 Broadway, Suite 110-D
Denver, CO 80202

Council members: 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, Neil Gulley, Curt Fix, Cindy Compton

Minutes

Administrative Matters

Discussion:

The meeting was called to order at 2:00 PM.

Introduction of interim commissioner

Discussion:

John Postolowski was introduced as the Interim Commissioner of Insurance. He went over his history with the Division (13 years with the Division, including market conduct and (currently) Deputy Commissioner.)

Commissioner Postolowski said we don't know who will be the next commissioner, and that the administration is still looking.

Changes to TAC membership

Discussion:

Margaret extended the thanks of the council to Chris Condie for his service to the board and the industry, as he prepares to move to Connecticut. She also thanked Eric Morgan for his service as well.

Cindy Compton was introduced as taking the LTAC seat until a new executive director of LTAC is hired.

In discussing the now open seat, the council determined that Eric Morgan would fill Chris' seat until the next administrative TAC meeting in September.

Upcoming DOI bulletins

Discussion:

Andy had mentioned during the last meeting that the Division was planning a bulletin on acceptable/prohibited short sale practices. Margaret said the council met separately to discuss, but did not reach any conclusions. Andy said that all conclusions reached were the same, and that the current laws, regulations, and other rules existing probably cover what is needed for short sales (i.e. don't provide free services.) Barring any UPL decisions from the Supreme Court, there is no reason to specifically chase anything at this point. Tim asked if there are any pending cases in front of the court, and Andy said he is not aware of any. Andy also said that there have been no complaints on short sales that cannot just be handled with the current regulations.

Andy then introduced the subject of titling over (issuing new policies without taking exception to an impairment as a method of settling claims). He said there are some more recent complaints about the practice, and the Division is concerned about marketability of title implications in the practice. He said there are times when it is okay to insure over impairments (judgments that can't be tracked or released, for example), but there are others where it is not appropriate (missed deeds of trust). George brought up an example of a HELOC loan that was paid but not closed by the bank, and that a title company may offer to reinsure while they try to correct the issue. Andy said there are instances now where title agents are missing valid loans, access issues, etc., and title insurance companies are not actually working on fixing the issues, but just offering to issue new policies without exceptions. Andy said that this practice just extends problems, as well as reduces consumer choice, which may eventually lead to anticompetitive practices of not paying any claims to ensure streams of business get locked into particular insurance companies (i.e. no other company can insure because of existing liabilities on a property.)

Title Stat Plan update

Discussion:

Andy gave an update on the statistical plan, specifically that the plan was adopted, and the group is now working on a guideline for implementation. The guideline includes sections on how the data can be used, what it shouldn't be used for, and provides some language for possible regulations for states wanting to implement the data plan.

Diane spoke from ALTA's perspective, thanking the NAIC group for the work, and for allowing ALTA and other parties to be involved in the process. She said the biggest issue still to be tackled is confidentiality of the data, and she hopes the draft has a confidentiality provision. Andy affirmed that they are building some automatic confidentiality in the plan, while keeping a regulator-to-regulator exception to that confidentiality.

DOI Enforcement Actions

Discussion:

Andy said that a hearing is coming up on Premier Title, and the Division is asking for restitution (~\$1.5 million) and fines (~\$100,000).

Andy also spoke about Direct Title. The Division received a call from an out of state underwriter stating that they had evidence that Direct had stolen escrow money, and they were investigating. It did not appear that any Colorado consumers are affected, though it has yet to be seen how many other states and consumers are involved.

Market Conduct Exams

Discussion:

Margaret asked if the Division could bring the council up to speed on proposed changes to Chapter 18 of the NAIC market conduct examiners handbook. Andy said he initially was not aware of the changes until he randomly called in to one of their conference calls, and they were discussing the title chapter. Andy said the main comment Colorado made involved

changing the term “underwriter file” to “underwriter and/or escrow/closing file.” Additionally, comments were made that GFEs are not always received by title agencies or companies, and there shouldn’t be a requirement then that they be in the files. Andy said he did not know when the planned changes will be addressed by the NAIC or take effect.

Discussion of 3-5-1, 7(G)

Discussion:

Bill started the discussion by asking if the intent of paragraph G (providing for gap coverage) was only for owners policies or for all. He said that most standard disclosures apply to all transactions. Bo said the original intent was to extend gap to owners, since lenders tend to take care of themselves when requiring coverage from title. It was agreed that, if a title company wants to limit their gap coverage to only owners, they need to modify the disclosure on the commitment, since 3-5-1 only requires it for owners policies (where the agent provides closing and settlement services.)

Discussion of 3-5-1, 7(D)

Discussion:

In the discussion on generic exceptions, it was questioned whether generic exceptions are prohibited for just owners policies or for all transactions. Andy said that, in reading the paragraph, it only applies to owners policies, and that the FAQ needs to be revised to reflect that.

Denver Post article on stolen refi money

Discussion:

Margaret asked if there is anything companies can do (or the Division can do statutorily or regulatorily) to help stop things like what was reported in the Denver Post (regarding Tim and Kim Canning). Andy said that there isn’t any evidence right now that the money was stolen by Classic or Ryan Rodenbeck. Andy also said that one thing that wasn’t clear from the article is that the Cannings have not lost their house, and that the companies are still working on trying to fix the situation.

Diane said this situation goes back to the value of the title industry, and that it raises the question of how title companies can protect consumers.

LTAC legislative update

Discussion:

Cindy Compton said that the private transfer fee covenant bill is currently being drafted, and should be introduced soon. LTAC is also monitoring a few other bills.