

**DEPARTMENT OF INSURANCE**

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July 6, 2009

Larry Buster, President  
Craig C. Page, Executive Vice President and Counsel  
California Land Title Association  
1215 K Street, Suite 1816  
Sacramento, CA 95814

Dear Mr. Buster and Mr. Page:

Thank you for your letter of June 30 regarding property profiles. We appreciate your willingness to seek clarification on this issue and we look forward to developing a clear policy to guide title insurers, underwritten title companies, and controlled escrow companies in conforming their disclosure of property information to the requirements of Insurance Code § 12404, as recently amended by SB 133.

The most certain approach to addressing the issues surrounding property information disclosure is formal rulemaking pursuant to the Administrative Procedure Act. Less formal approaches might be able to provide the necessary clarification, but we plan to begin the policy development process with the idea of preparing for formal rulemaking. We look forward to the CLTA's participation in this process.

Formal rulemaking will take several months. Pending the adoption of new regulations, some clarification is necessary with respect to the Department's expectations regarding this issue. In my letter to you of June 12 I outlined the types of information that title insurers are expressly permitted by statute to distribute to any person. I have been informed recently that some title insurers have interpreted this as a statement by the Department that the distribution of any information beyond what is expressly permitted by statute is unlawful and, in response, they have stopped distributing any information other than that specified in Insurance Code section 12404.1. I am further informed that this reaction has caused substantial disruption in real estate transactions.

I did not intend for my June 12 letter to be interpreted as a call for title insurers to change their business practices. They are certainly free to respond to the letter as they choose, within the law, but that letter was intended only to clarify the contents of the statute, not to induce a change in insurer business practices.

Pending adoption of regulations governing this topic, therefore, I will instruct the Department's staff that we will not commence any enforcement action against any title insurer for lawful distribution of property information in the manner that it was distributed immediately prior to June 12. If regulations on this topic are adopted we will of course require insurers to comply with the requirements of those regulations, including through enforcement actions as necessary. In the interim, however, we will follow policies intended to minimize market disruption caused by changes in insurer practices.

This does not, however, amount to an "anything goes" approach. As you indicated in your letter of June 30, SB 133 imposed new restrictions upon insurers in this regard. Property profiles cannot be distributed in a manner that would allow them to be converted by real estate agents, mortgage brokers, or any other persons into advertising for their own businesses (Ins. Code § 12404(c)(7)). Furthermore, the distribution of property profiles cannot be done as an inducement for any person to place or refer title business to the insurer (Ins. Code § 12404(a)). However, provided that property profiles are distributed in a manner that does not violate these or any of the other explicit prohibitions of section 12404, the Department will not take enforcement action against title insurers for distributing information about properties in the manner that they did immediately prior to June 12.

I hope and expect that this statement of Department policy will clarify the current situation and allow us to proceed with the initial development of possible regulations to govern this issue in a manner that does not result in continued market disruption. We will be convening a meeting in the near future to begin this policy development project. We look forward to CLTA's support in that effort.

Please do not hesitate to contact me if you have any further questions about this matter.

Sincerely,



JESSE R. HUFF  
Chief Deputy