

SENATE BILL REPORT

SB 6847

As Reported By Senate Committee On:
Consumer Protection & Housing, February 07, 2008

Title: An act relating to real estate settlement services.

Brief Description: Regulating real estate settlement services.

Sponsors: Senators Weinstein, Delvin, Haugen and Shin; by request of Insurance Commissioner.

Brief History:

Committee Activity: Consumer Protection & Housing: 1/31/08, 2/07/08 [DPS].

SENATE COMMITTEE ON CONSUMER PROTECTION & HOUSING

Majority Report: That Substitute Senate Bill No. 6847 be substituted therefor, and the substitute bill do pass.

Signed by Senators Weinstein, Chair; Kauffman, Vice Chair; Honeyford, Ranking Minority Member; Delvin, Haugen, Jacobsen, Kilmer and Tom.

Staff: Vanessa Firnhaber-Baker (786-7471)

Background: Title insurance guarantees that the owner of real estate being sold or refinanced has clear title to transfer the property . Before issuing a policy, a title insurance company conducts a search of past records to determine if there are any encumbrances, liens, or other clouds on the title. If there is a challenge to the title, the title insurance company pays to defend the buyer and pays to indemnify the buyer and the buyer's lender if the property is lost.

Title insurance is not marketed to the end user of the product. Instead, it is marketed to intermediaries, usually realtors, who assist parties in closing real estate deals. When a realtor owns a financial interest in a title company, this is commonly referred to as an affiliated business arrangement.

Title insurance companies must file their rates with the Office of the Insurance Commissioner (OIC), but can use the rates as soon as they are filed.

The federal Real Estate Settlement Procedures Act forbids the giving or receiving of anything of value to encourage the referral of business incident to real estate settlement services, including title insurance. Washington law prohibits title insurers and agents from providing anything of value in excess of \$25 per person over a 12 month period as an inducement,

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payment or reward for placing or causing title insurance business to be given to the title company. The OIC may fine title companies \$10,000 for each violation.

Despite these prohibitions, studies conducted by OIC in 2006 and 2007 determined that there was industry-wide, pervasive violations. Consequently, OIC convened a task force to review the title insurance industry and recommend any improvements to serve consumers better. The task force members included representatives from title companies and real estate brokers, lenders, and consumer advocates.

Summary of Bill (Recommended Substitute): The task force's recommended changes to the law are included. As a condition of licensing, title insurance agents must submit an annual report to the OIC containing the contact information of anyone who owns any financial interest in the agent and either: (1) produces business for the agent; or (2) is an associate of producers of business for the agent.

Title insurers and agents are prohibited from giving any gift or payment to influence the referral of business, or to reward the referral of business. However, gifts and payments are permitted if they are given in exchange for like value or comply with OIC rules. Realtors, escrow agents, and mortgage brokers (collectively, "producers") are prohibited from accepting any gift or payment that is illegal for a title insurer or agent to give.

Payments between title companies and producers are also permitted when the payment is a return on the producer's ownership interest in that title company. Such payments may include dividends, equity distributions, and business loans, and may flow from the title company to the producer, or vice versa. However, a payment is not a return on ownership interest, and is prohibited if the amount or frequency of the payment is tied to the amount of business the producer directly, or indirectly, refers to the title company.

Future title insurance rates must be filed 30 days before use, and title insurers must justify with actuarially sound data. Current rates must be re-filed at a date to be set by the OIC by rule; however, the date will be no earlier than January 1, 2010. Title insurers must also file escrow fees or rates with the OIC 15 days prior to use.

Title insurance companies must make their rates and fees publicly available through their website.

Producers with a financial interest in a title agent or insurer may not give any gift or payment to induce another producer to give that title company business. A producer with a financial interest in a title company may not prevent or deter title companies from delivering printed promotional materials to the producer's employees, independent contractors, office, or clients.

Producers may not require consumers to buy title insurance from an agency that the realtor, escrow agent, or mortgage broker has a financial interest in.

EFFECT OF CHANGES MADE BY CONSUMER PROTECTION & HOUSING COMMITTEE (Recommended Substitute): Title agencies must disclose every producer, or associate of producer, that has any financial interest in the agency; previously disclosure was limited to those that owned 5 percent or more of the title agency.

Gifts or payments from title companies to producers are permitted if allowed under OIC rules; the gifts and payments are no longer also limited to those that fit the definition of "normal education or promotional activities."

A provision was added to permit bona fide payments between title companies and producers that are returns on the producer's investment in the title company. However, the payments cannot be tied to referrals by the producer.

The "lock out" provisions are narrowed. A producer with an ownership interest in a title company no longer must allow other title companies unfettered access to its employees and office; it must only allow other companies to distribute printed promotional materials to its employees and office.

Appropriation: None.

Fiscal Note: Requested on January 28, 2008.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: The vast majority of the bill is the result of a task force that included a wide range of representatives from the title insurance industry. The legislation is practical and an improvement on existing law. Transparency is important in title insurance because the industry is so complex and arcane. The task force was very careful not to make recommendations that would have harmful unintended consequences. The \$25 gift rule is both arbitrary and inadequate. The new standards for when gifts are allowed are more flexible, and still allow title insurers to market effectively to realtors. The re-file provision in the bill is similar to what lots of other states do, and it is the same as what is required for rates of other types of insurance. The market needs stability and certainty; the bill will give it that. The market forces that protect consumers in other types of transactions are not present in title insurance; therefore, additional consumer protections are needed. Affiliated business associations (ABAs) are not prohibited; they just must be disclosed to OIC; this strikes a good balance.

CON: The provisions on rate filing are very unclear. It is not clear who needs to file the rates or what an excessive or inadequate rate is. ABAs should not have to be disclosed, they do not hurt consumers.

OTHER: The threshold for when a third party has a financial interest in a title insurance agency should be lower. If a realtor has a financial interest in a title insurance agency, the realtor should not have to open its doors to its competition. Realtors should be able to keep bad title insurers out of their offices.

Persons Testifying: PRO: Carrie Tellefson, Fidelity National Financial; Mike Kreidler, Pete Cutler, Office of the Insurance Commissioner; Bill Daley, Denny Heck, Dick Van Wagonen, Title Insurance Task Force; Mark Schedler, Coldwell Bankers.

CON: Joe Schreiner, Thurston County Title; Russ Cofano, John L. Scott.

Signed In, Unable to Testify & Submitted Written Testimony: CON: Dwight Bickle, Land America Title Company.

OTHER: Bill Riley, Washington Realtors; Raymond Davis, Pacific Northwest Title.