



State Of Ohio

Department of Insurance

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George V. Voinovich
Governor

Harold T. Duryee
Director

BULLETIN 95-3

August 1, 1995

To: All Title Insurance Agents, Title Insurance Agencies,
and Title Insurance Companies

From: Harold T. Duryee

Re: Title insurance agents, title insurance agencies, and
title insurance companies providing goods or services
to real estate agents, real estate brokerage offices,
banks, thrifts, mortgage originators and other entities

Ohio Revised Code Section 3933.01 provides, in pertinent part: No corporation, association, or partnership engaged in this state in the guaranty, bonding, surety, or insurance business, other than life insurance, nor any officer, agent, solicitor, employee, of representative thereof, shall pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as inducements to insurance, and no person shall knowingly receive as an inducement to insurance, any rebate of premium payable on the policy or any special favor or advantage in the dividends or other benefits to accrue thereon, or any paid employment or contract for services of any kind, or any special advantage in the date of the policy or date of its issue, or any valuable consideration or inducement not plainly specified in the policy or contract of insurance or agreement of indemnity, or give, receive, sell, or purchase, or offer to give, receive, sell, or purchase, as inducements to insurance or in connection therewith, any stock, bonds, or other obligations of an insurance company or other corporation, association, partnership, or individual.

Ohio Revised Code Section 3953.26 prohibits a title insurance company or title insurance agent from paying or giving to certain specified persons, either directly or indirectly, any commission or any part of its fees or charges, or any other consideration or valuable thing, as an inducement for or compensation for any title insurance business.

The Department of Insurance recognizes that the providing of goods and/or services of nominal value for advertising or promotional purposes is a legitimate practice and may not be an inducement for or compensation for title insurance business. The purpose of this bulletin is to provide title agents and

title insurance companies with guidelines which will assist them in complying with RC 3933.01 and 3953.26 when engaged in marketing functions.

For the purposes of this bulletin:

1. "Person" includes any individual (natural person), corporation, association, agency, partnership, or any other legal entity, or any employee(s) thereof described in Section 3953.26 of the Ohio Revised Code.
2. "Indirectly" means by or through any employee, independent contractor, or affiliate of a title insurance company or title insurance agent regardless of such employee's, independent contractor's, or affiliate's status as an individual licensee.
3. "Affiliate" of a specific person means a person that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with, the person specified.
4. "Business office" means the physical space in which a majority of the day-to-day business activity of a title agent or agency is conducted. "Business Office" does not include a temporary facility, pavilion, tent, hotel suite, lodge, loge, sky box, or other place of entertainment.
5. "Valuable thing" includes, but is not limited to, monies, things, discounts, salaries, commissions, fees, duplicate payments of a charge, stock dividends, distributions of partnership profits, credits representing monies that may be paid at a future date, special bank deposits or accounts, banking terms, special loan or loan guarantee terms, services of all types at special or free rates, and sales or rentals at special prices or rates.
6. "Fair market value" means the amount for which the thing would sell on the open market by a willing seller to a willing buyer in an arms-length transaction where the seller sells the goods or services in question during the normal course of his business.
7. "Nominal value" means the total fair market value of all goods and services provided for advertising, or promotional purposes to any one person does not exceed fifty dollars (\$50.00) per calendar year.

The providing of goods or services of nominal value for advertising, promotional purposes is not prohibited. Such purposes may include, but are not limited to, door prizes, tickets to sporting or entertainment events, golf, trips, receptions provided by a title company or agency, and seminars

on title and real estate matters. Activities which involve the defraying of expenses that would otherwise be incurred by a defined person are likewise not prohibited so long as the expenses defrayed are of nominal value. However, goods, services or contributions received by other persons (i.e. employees of the person) may not be aggregated or combined to support any one event, occasion, or gathering (social or professional) of any such person (i.e. employer) as defined herein.

Title insurance companies and title insurance agents who give goods or services of nominal value, for promotional or advertising purposes are advised to keep records of such transactions which clearly indicate the person to whom the goods are given or the services provided, the date, and the fair market value of the gift. The records should be available to the Department upon request. Undocumented transactions or transactions which exceed nominal value will be considered acts of inducement or compensation in violation of Revised Code Sections 3933.01 and 3953.26.

A valuable thing provided to a person in exchange for payment, whether such payment is in the form of goods, services, or money, will not be considered an inducement so long as the payment bears a reasonable relationship to the fair market value of the thing. To the extent that the fair market value of the thing is in excess of the goods or services provided or the monies paid to the person, that excess will be considered an inducement.

Notwithstanding the above, the Department will consider the following practices not subject to the provisions of O.R.C. 3933.01 and 3953.26 or any record keeping requirements where such activities are conducted during the normal course of business:

1. The providing of goods or services at no cost or at reduced cost to non-profit organizations.
2. The providing of a business meal, subject to all of the following:
 - (a) such meal is not a direct payment of a specific title order(s);
 - (b) the purpose of such meal is to discuss business issues with the title agent/representative;
 - (c) the meal is not combined with or associated with any promotional or advertising event;
 - (d) the number of persons present at such meal is reasonably related to the scope of the business issues under discussion. For this purpose, the title agent and up to six

additional persons shall be considered a rebuttable presumption of reasonableness; and

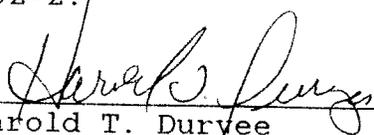
- (e) such meal falls within the definitions set forth in the Internal Revenue Code of 1986, as amended, or the regulations promulgated thereunder, when deductible for income tax purposes.
- 3. Food, beverage, entertainment, and parking costs directly related to hospitality events held at a title agent's or title insurer's business office, subject to a maximum of two such events per office per calendar year.

Any gifts, door prizes or other things of value given at a hospitality event are subject to the nominal value guidelines and should be recorded.

- 4. The providing of any information which may be found in public records, regardless of the form in which such information is compiled and provided. Title examinations and/or title searches are excluded from this exception; any promotion or advertising relating to title searches or examinations must be recorded and is subject to the nominal value requirements.

Title insurance companies, agents and their representatives licensed in Ohio are hereby cautioned that the Department will investigate complaints alleging violations of RC 3933.01 and 3953.26. The substance as well the form of any particular transaction will be scrutinized. Any market conduct investigation and/or audit of an agent, agency, or company will be at the expense of that entity should a violation be found. Ohio Administrative Code Rule 3901-1-40(B)(9) regulates the general activity of an insurance agent and provides that a license may be revoked or not renewed after notice and hearing wherein it is shown that the agent has given or offered any form of compensation to an entity prohibited from receiving such compensation under the rules or statutes of the state of Ohio. Furthermore, RC 3933.03 provides that the Superintendent of Insurance, upon the conviction of any agent for violation of Section 3933.01, shall revoke the license of such agent and no license shall be granted such agent for a period of three years after said revocation.

This bulletin supersedes Bulletin 92-2.



Harold T. Duryee
Superintendent