

DRAFT January 22, 2015 Changes from January 20, 2015 draft in redline

Birny Birnbaum Consulting, Inc. Letterhead

~~January 27~~February 3, 2015

[Agency]

Re: Request for Information Pursuant to Examination Warrant 2015-X

Dear {Agency Contact},

Your title agency is licensed by the District of Columbia (“DC”) Department of Insurance, Securities and Banking (“DISB”) to conduct business in the DC. The DISB has retained Birny Birnbaum Consulting (“Birnbaum”) to conduct an examination of title insurance rates used by title insurers in the DC. As part of that review Birnbaum has obtained information from title insurers in support of their filed rates. The bulk of the filed rates are for commissions to agents. Consequently, the DISB has authorized Birnbaum to examine selected title agents as part of the broader review of title insurance rates used by title insurers in the DC. Your agency has been selected to be one of the title agencies examined.

The purpose of the examination is to obtain information and insight into the operation of the DC title insurance and settlement market, the activities performed by title agents, the costs of providing title and settlement products and services and to identify opportunities for improvement in the DC regulatory environment. The examination is intended to be a dialogue with your agency to obtain information to assist the Commissioner in carrying out his statutory responsibilities regarding title insurance.

The purpose of the examination is not to identify violations by your agency and your agency will not be evaluated or graded based on the information you provide.

The requests for information contained in this letter are substantial. If any of the requests are overly burdensome, please discuss with Birnbaum. If any of the requests can be modified to enable you to provide substantially the same information with less burden, please discuss with Birnbaum.

You are invited to provide any information to Birnbaum you feel relevant for his review and analysis.

There are several reasons why this dialogue with title agents is being conducted through the Commissioner’s examination authority:

1. The DC statutes provide the utmost security for your sensitive and confidential information when obtained through an examination.

2. The examination allows for greater dialogue with your agency than a request for data alone.

3. The examination provides an opportunity to get behind the numbers to better understand issues facing title agents in DC than a request for data alone.

Birnbaum proposes the following approach for information exchange and dialogue with your agency.

1. All correspondence and information provided in response to this letter is confidential information and not subject to public access. The correspondence and information is protected from public disclosure pursuant to District of Columbia Official Code 13.1404(f). Information that can be associated with your title agency will not be included in any public report unless you specifically agree to such disclosure.
2. This letter contains a number of requests for information, in three categories. Category 1 is a single request for a list of title policies issued by your agency. Birnbaum will randomly select transactions from this list and ask you to produce your files for those transactions, as explained below. You are asked to respond to this Request 1 by February ~~25~~<sup>18</sup>, 2015. Category 2 is requests for information for which you are asked to provide responsive data and documents to Birnbaum by -and to the remaining requests by March 18<sup>4</sup>, 2015 to allow Birnbaum to review prior to an on-site visit. Category 3 are requests for information for which you may provide information, data and documents prior to Birnbaum's on-site visit or for which you may wait until Birnbaum's on-site visit to discuss the topic of the request with Birnbaum.
3. Request 1 (Category 1) is for a list of all policies issued by your agency in specific calendar years. Birnbaum will randomly select no more than 20 policies from the list and ask you to produce your files for those transactions within 21 days of the request.
4. Birnbaum will schedule an on-site visit to interview key personnel from your agency and review your operations. Birnbaum hopes to schedule the on-site visit in the first week of April, 2015. Birnbaum ~~expects the on-site visit to last no more than four hours and~~ will coordinate with you to organize an efficient visit.

5. Birnbaum will compile and analyze information from the agent interviews and responses to information requests as part of his report to the Commissioner on the rates filed by title insurers. The report will not grade or evaluate individual agents.
6. Birnbaum will contact you in the next few days to confirm your receipt of this letter and to answer any initial questions about the information requests and on-site visit.
7. Please identify the person or persons you wish to be the contact(s) for Birnbaum with respect to this examination, including name, e-mail address, physical address and phone number. Please contact Birny Birnbaum (contact information at end of letter) with any questions or concerns.

## Requests for Information

### Category 1: Please provide a response by February 25, 2015

1. Please provide a list in either spreadsheet, word processing or text format of all title insurance policies issued on properties located in the DC by your agency in calendar year 2014 with at least the following information for each policy:
  - a. Transaction identifier – this is a unique identifier for the policy
  - b. Title Insurance Company Issuing the Policy
  - c. Type of Policy 1: Residential or Commercial
  - d. Type of Policy 2: Lender Only, Owner Only, Lender Simultaneous Issue, Owner Simultaneous Issue
  - e. Amount of Coverage
  - f. Date of Issue
  - g. ZIP Code location of Property

If your data systems contain additional information about policies issued, please provide all data elements available.

If your data systems do not have the capability of providing a report of individual title policies, please provide a list of title policy transactions. For example, if your system allows you to report the lender's policy and the owner's policy of a simultaneous issue as separate transactions, report two transactions as set out above. If your system is only able to identify title transactions, then report the simultaneous issue with a single transaction identifier and indicate that the transaction was simultaneous issue.

**For the remaining requests, unless otherwise specified, please consider the request limited to residential property transactions.**

**Category 2: Please provide your response by March 18 2015**

2. Please provide the following for each year from 2010 through 2014
  - a. Title orders open at beginning of year
  - b. Title orders opened during the year
  - c. Title orders closed during the year
  - d. Title orders open at end of year
  - e. Escrow/settlements open at beginning of year
  - f. Escrow/settlements opened during the year
  - g. Escrow/settlements completed during the year
  - h. Escrow / settlements open at end of year
  - i. Lender's Title Only policies issued
  - j. Owner's Title Only policies issued
  - k. Lender's and Owners Policies Simultaneous Issued
  - l. Gross title premium all Policies
  - m. Agency-retained title premium all Policies
3. What services does your agency offer? Please list all services offered in DC, VA and MD. Please provide your answer in a table with four columns. Column 1 is a description of the service, Columns 2, 3 and 4 are for DC, VA and MD, respectively, with the fee charged for each service in the column/row if you provide that service in that state. Do not include title insurance or closing protection letters in this list.
4. Please provide any internal expense or profitability analyses for provision of any of the services you offer to the public or to title insurers. This request includes any or all components of the production and issuance of a title insurance policy.
5. Please provide a list of all employees and significant contractors of your agency with a brief description of the employee or contractor job title and functional activities.
6. Please identify by job title the five highest paid employees or owners of your agency by position and the annual compensation by year from 2010 to 2014, broken out by salary, commission, bonus, benefits, profit sharing, other. We recognize this is very sensitive and confidential information and, as with all information provided in response to this request, will be carefully guarded and kept confidential.
7. If any of your employees or contractors is compensated in whole or in part on the basis of sales volume, please describe the compensation structure for those employees.

~~8. Please identify any differences in the DC, VA and MD jurisdictions that make it easier or harder or more or less expensive to perform title and settlement services. Stated~~

~~differently, are there things about the DC that make it a more expensive or difficult jurisdiction to provide title and settlement services than in MD or VA?~~

9.8. Please provide a copy of your current contract for each title insurance company for whom you have issued a policy in the last five years. If your contract with a title insurer was terminated within the past five years, please provide the last contract in effect.

10.9. Please provide audited financial statements for your title agency for each of the past three years. If the financial results of your title agency are included in those of a larger enterprise, please provide the financial statements for the larger enterprise. If you do not routinely obtain an audited financial statement for your agency, please provide unaudited annual financial statements.

11.10. Please identify any title or settlement software you use for any aspect of the title preparation, title issuance, title claim and settlement processes. For example, Next Ace, SoftPro or RamQuest, among many others.

~~12. Please list the activities and tasks your agency may perform during the process of soliciting title business to opening of a title order to issuing a title policy through any claims activity you perform.~~

13.11. Please estimate the percentage of title orders for which your agency performs a curative action prior to issuing the policy.

14.12. Please list the five most common curative actions you perform.

15.13. Please estimate the percentage of title orders for which you require underwriting assistance from your title insurer.

16.14. Please explain how your agency performs title search and examination. Do your employees perform these functions? Do you utilize contractors? Do you purchase a title search package?

17.15. Please identify the sources of title information you use to prepare a title commitment with a description of the information obtained from each source. Please identify the cost of the information from each source. If you purchase a title search package from a vendor, please identify the vendor and the cost for the search package.

~~18.16.~~ Please identify any automated title search, examination or underwriting activities and the software used for the automated activities.

~~19.17.~~ Please provide a list of a title insurance claims your agency has paid in whole or in part from 2010 through 2014. Note: This is not a request for all claims filed with your title insurer, but only for claims for which your agency contributed to the claim payment. For each such claim, please identify the cause of loss and whether any part of the claim payment your agency made was covered by an errors and omission or other insurance policy.

~~20.~~ Please describe the top five ranked by employee time and expenditures types of activities you engage in for marketing your business and otherwise acquiring title and settlement transactions.

~~21.1.~~ Please identify the title agencies and/or title insurers you consider to be your primary competitors. Please explain why they are your primary competitors.

~~22.18.~~ Please provide a list of all data elements you maintain in a database or searchable software for your title transactions.

~~23.19.~~ Please provide a list of all general ledger revenue and expense accounts in your financial accounting system.

~~24.1.~~ Please identify any efficiency or productivity improvements in your title or settlement transactions over the past five years or expected over the next two years.

~~25.1.~~ Please identify any regulatory changes or title insurer requirements that have increased the time and activity in your title and settlement transactions over the past five years or expected over the next two years.

~~26.20.~~ How many times have you been audited by each of the title insurers for whom you are an appointed agent since 2010? Please provide a copy of the most recent audit report for each of the title insurers for whom you are appointed or, if your appointment was terminated, insurers for which you were formerly an appointed agent within the past five years.

~~27.21.~~ Please identify the five top sources of title and settlement orders for each year from 2010 to 2014 and the number of title orders from each source. A source of a title order is the real estate professional who refers the consumer who will eventually receive the title insurance

policy or settlement services. Sources of title orders are typically real estate agents, attorneys, mortgage originators / lenders, developers and homebuilders, among others.

~~28.~~22. Do you provide any free services to your sources of title insurance and settlement orders? For example, do you charge a fee for a title commitment if no title policy is issued from that title order? Do you provide information or printing to any of your sources of business without charge? If so, what information or service to whom and in what volume.

23. Is your agency affiliated with any title insurer, real estate agency, lender, mortgage originator, attorney, developer, homebuilder or other organization involved in residential real estate activities? If yes, please describe the affiliated business arrangement, including year established, ownership structure and percentage of title orders from the affiliated organization, name of affiliated business administrators (if used) and services provided by the administrator.

~~29.~~24. Please provide copies of any marketing service agreements your agency currently has in place or which were in place at any time in 2014.

**Category 3: If possible, please provide any responsive information to Birnbaum prior to his on-site visit. If you prefer not to provide any documents, the issues raised in the following requests can be discussed during Birnbaum's on-site visit**

25. Please identify any differences in the DC, VA and MD jurisdictions that make it easier or harder or more or less expensive to perform title and settlement services. Stated differently, are there things about the DC that make it a more expensive or difficult jurisdiction to provide title and settlement services than in MD or VA?

26. Please list the activities and tasks your agency may perform during the process of soliciting title business to opening of a title order to issuing a title policy through any claims activity you perform.

27. Please describe the top five – ranked by employee time and expenditures – types of activities you engage in for marketing your business and otherwise acquiring title and settlement transactions.

28. Please identify the title agencies and/or title insurers you consider to be your primary competitors. Please explain why they are your primary competitors.

29. Please identify any efficiency or productivity improvements in your title or settlement transactions over the past five years or expected over the next two years.

30. Please identify any regulatory changes or title insurer requirements that have increased the time and activity in your title and settlement transactions over the past five years or expected over the next two years.

Sincerely,

Birny Birnbaum  
Contract Examiner  
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