



Government of the District of Columbia
Muriel Bowser, Mayor
Department of Insurance, Securities and Banking



Chester A. McPherson
Acting Commissioner

February 19, 2015

Michael Russo, Jr., President
DC Land Title Association
Council Baradel
125 West Street, Fourth Floor
Annapolis, Maryland 21401

Dear Mr. Russo,

Thank you to you and the members of the DCLTA for your comments on the draft examination warrant and request for information to selected title producers. We appreciate you taking the time to poll your members and give us feedback. We intend to issue the examination warrants and request for information soon and want to respond to some of the issues you raise in your letter. After you have had a chance to review these responses, I will be happy to schedule another meeting or a call to discuss any remaining issues prior to moving ahead.

Examination Format

We appreciate your concern that the selection of producers to be examined may not fully reflect all the experiences of title producers operating in the DC. We must, however, balance cost and effectiveness. We believe that interacting with ten producers representing different underwriters, different size and presence or absence of affiliated business arrangements strikes the best balance of providing useful information while limiting the cost of the effort.

In addition, we have chosen the examination format because it affords the highest protection for sensitive information of the producers and it is consistent with our agreement with title insurers for covering the cost of the overall rate examination

Confidentiality

As stated in earlier correspondence, confidentiality of examination work papers is a foundation of state insurance regulation. While the statutes permit sharing of confidential information with

other regulators if those regulators have strict confidentiality provisions in place, we do not have any plans to share confidential information with other state insurance regulators or the NAIC.

Cost

We confirm that the cost of the examiner will not be borne by title producers.

Conflict of Interest

Mr. Birnbaum has a consulting business, Birny Birnbaum Consulting, Inc., in which he provides consulting services to various organizations, including state and federal regulatory agencies. The DISB has examined any potential conflicts of interest for Mr. Birnbaum in this engagement and has found none. The mere fact that Mr. Birnbaum also performs work for the Center for Economic Justice does not create a conflict of interest. Mr. Birnbaum has worked on title insurance issues since 1991 as both a regulator and expert witness and consultant for regulators. We believe his experience and training make him ideally suited to this assignment.

Scope

You again raise the issue that an examination of ten producers “could not possibly capture the diversity of agent types and practices in D.C.” We will continue to rely upon DCLTA to educate the DISB and Mr. Birnbaum on issues you deem relevant. You also raise the concern that the examination is overbroad as a few of the goals and questions seek a comparison of DC practice with that in Virginia and Maryland. As stated during our meeting, one of our goals is to identify ways to improve the operating environment for title insurers and title producers in the DC, so to the extent such comparative jurisdictional questions are not burdensome to title producers, the information is very useful to us.

Methodology

You express concern about the factual statement that the bulk of the filed rates are for commissions to producers and seem to view this as a criticism of title producers. That is not the case. We recognize the difference in title insurance and other types of insurance and understand that the amounts paid to producers is not all compensation as the bulk of commissions to other types of insurance producers may be. The fact that 80 to 85% of title premium goes to title producers means that inquiry into the activities of title producers relative to the commissions received is necessary to review title insurance rates.

You conclude your introductory comments by stating that the proposed examination is “ill fitted to enabling DISB to understand this newly regulated industry to the scope, depth and objective nature of the standards required” and offer to provide a review of risk avoidance efforts specific to DC title issues. Respectfully, the two approaches are not mutually exclusive. Your future presentation on risk avoidance efforts is greatly appreciated and will provide useful information,

but insufficient information to enable the Commissioner to evaluate title insurance rates. We believe that interaction with individual title producers is an excellent method for better understanding both the title industry in DC and the costs of producing title insurance products.

Comments on Individual Requests for Information

I appreciate that you feel many of the individual requests are appropriate for this examination, even if some of the information may be difficult to provide. Your comments on other individual requests are that the request is overly broad and seeks confidential information. Mr. Birnbaum will work with individual title producers to minimize the burden on any producer of responding to the requests for information. We have previously discussed protection of confidential information and I will also point out that there is a difference between the confidential work papers to support the examination and the public report which does not include any confidential information.

In addition, on most of the requests for information, you commented that the information was not relevant to a rate exam. Respectfully, we have reviewed the requests for information and each is directly related to evaluating the costs of producing title in the DC and the nature of competition in the DC title insurance market. I also want to reiterate that the purpose of looking at information from individual producers is not intended to be a compliance audit. Rather, we are using the examination format as the safest and most effective method of getting the information needed for Mr. Birnbaum's charge and to better enable the DISB understand the elements necessary to carry out our responsibilities under District law for reviewing rate filings.

Sincerely,

A handwritten signature in black ink, appearing to read 'Philip Barlow', with a long horizontal flourish extending to the right.

Philip Barlow,
Associate Commissioner

cc: Birny Birnbaum