

NO. 40752-3-II

**COURT OF APPEALS, DIVISION
OF THE STATE OF WASHINGTON**

CHICAGO TITLE INSURANCE COMPANY, an Authorized Insurer,

Appellant,

v.

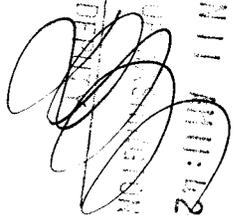
WASHINGTON STATE OFFICE OF THE INSURANCE
COMMISSIONER,

Respondent.

RESPONDENT'S BRIEF

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I. INTRODUCTION

The sole question presented is whether the Insurance Commissioner's ("Commissioner") Final Order correctly holds insurer Chicago Title Insurance Company ("Chicago") responsible for its appointed agent's admittedly illegal insurance transactions.

Chicago sells title insurance in Washington State through agents appointed to solicit sales and collect premiums. The Commissioner investigated and warned Chicago regarding its past solicitations violating WAC 284-30-800, the illegal inducement regulation, an unfair practice under Title 48 RCW ("Insurance Code"). After that warning, Chicago's appointed agent in Kitsap County, Land Title, violated the illegal inducement regulation. The Commissioner then brought a regulatory enforcement action against Chicago to hold it responsible for its appointed agent's violations. Chicago and the Commissioner stipulated that Land Title's solicitations violated the illegal inducement regulation. The Commissioner's Final Order concluded that under the Insurance Code, the undisputed facts showed the illegal solicitations of Chicago's appointed agent were imputable to Chicago as the insurer, and, alternatively, Chicago was liable for those acts under the common law of agency. Chicago now disputes that those regulatory violations may be imputed to Chicago as the principal/insurer responsible for its agent.

To make its arguments, Chicago claims its ongoing, decades-long appointment of Land Title as its agent is irrelevant in determining Chicago's responsibility, and further, that the insurance statutes defining the scope of that agency are irrelevant. Chicago argues that when determining whether insurers are responsible for their appointed agents, in insurance regulatory actions, the common-law agency doctrine of "actual authority" (derived from tort and contract cases) should control, rather than the Insurance Code. But Chicago relies on an incorrect analysis of actual authority, and does not address the order's conclusion Chicago is also responsible under the common law doctrine of apparent authority.

Chicago's arguments are contrary to one hundred years of insurance law. To reject Chicago's arguments and affirm the Commissioner's Final Order, this Court's analysis need go no further than the language of the applicable statutes, a brief statutory history of the Insurance Code, and key cases interpreting past and present insurance laws. Under the Insurance Code, Chicago, like all insurers in Washington, may be held accountable by the Commissioner in enforcement actions for illegal solicitations by its appointed insurance agents. The Final Order's legal conclusion that Chicago is responsible for its appointed agent's illegal solicitations should be affirmed.

II. RESTATEMENT OF THE ISSUE

Does the Commissioner have the authority under Title 48 RCW (“Insurance Code”) to hold insurer Chicago responsible for the illegal solicitations of insurance applications by its appointed agent?

III. RESTATEMENT OF THE CASE

A. The Need For Consumer Protection In The Title Insurance Industry

Title insurance policies are marketed differently than other types of insurance policies (such as property and casualty insurance). AR 470 (*Declaration of James E. Tompkins*, at ¶7). Title insurance is typically solicited from “middlemen”, whereas insurers (and their agents) typically solicit the sale of other types of insurance directly from the consumer. *Id.* “Middlemen” are real estate agents, banks, lenders, builders, developers and others. *Id.* at ¶5.

Title insurance middlemen have great influence over directing consumers to purchase policies from particular title insurers. *Id.* Despite the fact that the majority of lending institutions require title insurance, often the last thing on the mind of the potential homeowner is the purchase of a title insurance policy:

The typical consumer who purchases a title insurance policy does so as just one more expensive step in the dizzying, convoluted and often confusing flurry of paperwork and signings that culminate in the closing of the

home purchase. Consumers who might otherwise normally shop around and carefully compare prices before buying insurance typically emerge from their home closing or refinancing having paid for a title insurance policy that they know virtually nothing about.

Id. A Washington consumer most often simply obtains a policy from whichever title insurer is recommended by a middleman involved in the consumer's home sale. *Id.*

Solicitation through middlemen is not a model that benefits consumers through market-driven forces. AR 470-71 at ¶8. Consumers are bypassed completely as title companies spend nearly all of their marketing budgets "winning and dining" real estate agents, banks, lenders, builders, developers and others middlemen and go-betweens in a position to steer their home-buying clients to particular title insurance companies. *Id.* These incentives, paid by the title insurance agent to middlemen, are the "inducements" in issue in this matter. *Id.*

In 1988, the realities of soliciting business in the title insurance industry led to the Commissioner's promulgation of the illegal inducement regulation, WAC 284-30-800.¹ This regulation protects title insurance consumers in this process of "placing" title insurance business, i.e. selling

¹ The full text and history of WAC 284-30-800 is contained in *Appendix A*. This regulation was in effect at all times relevant to this case. In 2008, the Legislature enacted a new statute pertaining to inducements in the title insurance industry, RCW 48.29.210, effective in 2009. Because the underlying statutory authority changed, the Commissioner repealed WAC 284-30-800 in 2009 and adopted superseding regulations (WAC 284-29-200 et seq.). The new regulations still prohibit excessive inducements.

a specific insurer's title insurance policy to a consumer. AR 471 at ¶9; AR 473-T; AR 473-AF. The regulation was intended to minimize the effect of gift incentives by prohibiting "title insurers and their agents" from providing "inducements" over a certain total annual value to title insurance middlemen. Wash. St. Reg. 88-07-072, p. 178; *see also* Sec.III.C, *infra*. Examples include meals, gifts, tickets to sporting events, golf, and classes, and other items of value. AR 471-72 (¶11).

B. Chicago's History Of Violating WAC 284-30-800, The Illegal Inducement Regulation

Chicago is a Missouri corporation that in 1977 began selling title insurance in the State of Washington. AR 513. Chicago sells title insurance directly in many Washington counties, and appointed agents sell its insurance in a few other counties. *Id.*

In 1989 former Commissioner Dick Marquardt reminded title insurers that as to WAC 284-30-800:

Title insurers are liable for any activity conducted by their agents regarding this regulation, whether the title insurers have knowledge of the activity or not. As of this writing, the first fine, in the amount of \$20,000, is in the process of being levied against a title insurer.

AR 417-419 (emphasis added). A copy of the illegal inducement regulation was enclosed with the letter, and the letter is located on the Washington Land Title Association ("WLTA") website. AR 348.

Chicago is a member of WLTA. AR 382. Chicago's contract with Land Title required its membership in WLTA as well. AR 399 (clause 4.P).

In 1993, Chicago appointed Land Title as its sole agent in Kitsap County. AR 371-2, 398-402. Land Title only sells Chicago's title policies in Kitsap County. AR 398.

In August 2005, the Commissioner undertook a study of the title insurance business in Washington that covered the eighteen-month period following January 1, 2004. AR 473-E; 473-AD-AE. In 2006 the Commissioner published a report of its study detailing widespread violations of the illegal inducement regulation by major title companies operating in Washington,² and specifically determined that Chicago had "repeatedly violated" that regulation. AR 473-H (*Investigation* at p. 6). The Commissioner's 2006 report placed Chicago on notice that violations of the inducement regulation were occurring throughout its industry and in its organization. AR 472 (*Tompkins Decl.* at ¶13).

On November 21, 2006, following the investigations, the Commissioner issued a Technical Assistance Advisory to insurers licensed to sell in Washington State. AR 473-AF-AI. The Advisory again made it

² AR 471-2 (¶¶10-12); 473A-N ("An Investigation into the Use of Incentives and Inducements by Title Insurance Companies," dated October 2006). (Note: the exhibits to the Tompkins Declaration were inadvertently omitted by the presiding officer from the administrative record, but were inserted prior to administrative review by the presiding officer and then numbered/lettered "AR 473A" through "473-AI".).

clear the illegal inducement rule, WAC 284-30-800(2), applied by its express terms to “*title insurers and their agents.*” *Id.* (emphasis added).

Finally, in May 2007 a new investigation by the Commissioner revealed that Chicago’s appointed agent, Land Title, committed numerous violations of the illegal inducement rule over the four-month period from December 1, 2006 through March 31, 2007. AR 546-48 (*Amended Notice of Hearing*, ¶¶2.2-3.3). Based on that investigation, the Commissioner commenced an administrative action in 2008 against Chicago. AR 564-69 (*Notice of Hearing*); AR 546-50 (*Amended Notice of Hearing*).

C. The Adjudicative Proceeding On Violations Of WAC 284-30-800 By Chicago’s Agent Is Bifurcated

1. Phase I – Summary judgment on legal issue of Chicago’s liability for its agent.

The Commissioner’s enforcement action was governed by the Insurance Code, the Administrative Procedure Act (RCW Ch. 34.05; hereafter “APA”), and the implementing rules of each. The parties agreed to bifurcate the proceedings into two “phases.” In Phase I, the sole issue to be determined was the legal responsibility of Chicago for the actions of Land Title. AR 065 (*First Pre-Hearing Order*). Chicago and the Commissioner agreed to defer fact-finding as to whether Land Title violated the illegal inducement rule until a later “Phase II” hearing. AR 533-7. Chicago, stipulating to the violations by Land Title for

purposes of its motion, moved for summary judgment on its responsibility for Land Title's violations of the rule. AR 482 (*Motion for Summary Judgment*). In an initial order, an Administrative Law Judge granted summary judgment to Chicago. AR 279-92. The Commissioner timely requested review of that order. AR 227-242. The Commissioner's Review Judge held further proceedings and issued a Final Order granting summary judgment against Chicago. The Final Order concluded that if, as stipulated, Chicago's appointed agent had violated the illegal inducement regulation, and because that type of violation "clearly is a form of solicitation" falling under the statutory definition of agent under RCW 48.17.010, then the Commissioner could hold Chicago responsible for those violations. AR 118-167 (*Final Order*); 128 (FF 3); 145 (FF 29), 146-47 (FF 33).³

2. Phase II – Chicago settles prior to contested hearing, agreeing to pay a fine if it loses this appeal.

Phase II would have been the fact-finding hearing as to whether Land Title, acting on behalf of Chicago, actually violated the illegal inducement rule. CP 068-072. However, on May 14, 2009, while Phase II

³ The denomination in the Final Order of the undisputed material facts as "findings of fact" is consistent with the APA requirement that "every decision and order" shall contain "numbered findings of fact" and conclusions of law on all material issues. RCW 34.05.461(3), (4); WAC 10-08-210(3), (4). The material facts were based almost exclusively upon the exhibits to declarations submitted by the parties in support of or in opposition to the summary judgment motion. AR 346-476 (Commissioner's decls. and ex.); AR 498-523 (Chicago's decls. and ex.).

was still pending, Chicago filed its petition for judicial review of the Final Order relating to Phase I. AR 002-012. On October 5, 2009, while the petition for judicial review was pending in Thurston County Superior Court, the Commissioner and Chicago entered into a Stipulation and Agreement admitting that Land Title violated WAC 284-30-800, and settling the Phase II adjudication in full.⁴ *Appendix B.*⁵

D. Superior Court Order Relevant To Appeal

Sitting as an appellate court, the Thurston County Superior Court affirmed the Final Order of the Chief Hearing Officer. CP 172-3. During the judicial review proceedings in superior court, Chicago also agreed to entry of another order permanently waiving all rights, remedies, and arguments on one of the issues it had raised: that the Commissioner's Chief Hearing Officer should have recused herself. CP 160 (the "recusal issue is waived for all purposes and is no longer an issue on appeal.").

IV. STANDARD OF REVIEW IS *DE NOVO*

The Final Order, which was based on a summary judgment motion, is the only order subject to review, and it is reviewed under at *de novo*

⁴ Under the settlement, should Chicago lose this appeal, it has agreed to pay a predetermined fine of \$48,344 following the conclusion of the appeal process. *Id.*

⁵ The Administrative Record was transmitted to the superior court as it existed on August 27, 2009. CP 085. On December 2, 2009, a *Final Order of Dismissal (Regarding Phase II)* was entered settling the Phase II adjudication, but that Order was not added to the Administrative Record previously provided to the superior court. (*See also Commissioner's Motion for Judicial Notice*, filed concurrently, and Exhibit A to the supporting declaration, which contains a certified copy of that Order).

standard. *Chi.Br.* at 19-20. In *de novo* review of an administrative agency's conclusions of law, substantial weight is given both to the agency's view of statutes falling within the agency's expertise, "and to an agency's interpretation of rules that the agency promulgated." *Verizon Northwest, Inc. v. ESD*, 164 Wn.2d 909, at 915, 194 P.3d 255 (2008). "When the agency has expertise in a specialized field of law and has quasi-judicial functions in that field, [the Court] accord[s] substantial weight to its construction of statutory words, phrases, and legislative intent." RCW 34.05.570(3)(e); *Heinmiller v. Dep't of Health*, 127 Wn.2d 595, 601, 903 P.2d 433 (1995), *cert. denied*, 518 U.S. 1006, 116 S. Ct. 2526, 135 L. Ed. 2d 1051 (1996); *Wash. Indep. Tel. Ass'n v. WUTC*, 110 Wn. App. 498, 508, 41 P.3d 1212 (2002). "[A]lthough a[n insurance] commissioner cannot bind the courts, the court appropriately defers to a commissioner's interpretation of insurance statutes and rules." *Credit Gen. Ins. Co. v. Zewdu*, 82 Wn. App. 620, 627, 919 P.2d 93 (1996).

Chicago relies on an incorrect standard of review of facts in a summary judgment order. The applicable standard is:

[W]here the original administrative decision was on summary judgment, the reviewing court must overlay the APA standard of review with the summary judgment standard. Accordingly, we view the facts in the record in the light most favorable to the nonmoving party. Summary judgment is appropriate only where the undisputed facts entitle the moving party to judgment as a matter of law.

We evaluate the facts in the administrative record de novo and the law in light of the above-articulated ‘error of law’ standard [under RCW 34.05.570(3)(d)].

Verizon Northwest at 915-6 (internal cites omitted). The “substantial evidence” standard in RCW 34.05.570(3)(e) does not apply. *Verizon Northwest*, at 916, n.4.

Although the Commissioner contends the “arbitrary and capricious” standard of review is not applicable here, Chicago accurately describes this standard as “willful and unreasoning action, without consideration and in disregard of facts or circumstances.” *Chi.Br.* at 43.

V. ARGUMENT

A. **The Legislature’s Grant Of Broad Regulatory Authority To The Insurance Commissioner Includes The Power To Hold Insurers Responsible For Illegal Inducements By Their Agents**

1. **The Commissioner has broad authority to regulate “all persons” involved in the business of insurance.**

The Commissioner has extensive authority to regulate insurers. This authority includes both “authority expressly conferred” and authority “reasonably implied from the provisions” of the Insurance Code. RCW 48.02.060(1). Chicago’s argument is based on the false premise that the Legislature intended to allow an insurer to reap the financial rewards gained through the sale of its insurance policies to consumers, but disclaim all regulatory accountability for unfair practices used by its agents in

soliciting those policies. Contrary to Chicago's argument, there is no requirement that the Code expressly make insurers "vicariously liable" for their agents, when such authority is clearly inherent in an express legislative grant of authority to regulate corporations.

The Commissioner has authority both to enforce the provisions of the Insurance Code, and to make reasonable rules and regulations for effectuating any provision of the Code. RCW 48.02.060(2), (3)(a). Specifically, the Commissioner's rulemaking authority includes the authority to define acts and practices as unfair or deceptive. RCW 48.30.010(2). The Legislature has defined many unfair trade practices by statute. *See generally* RCW chapter 48.30.⁶ However, in addition to those unfair or deceptive acts or practices expressly defined, the Legislature delegated to the Commissioner authority to define additional practices as unfair to consumers. Whenever an unfair practice is committed, the Commissioner may utilize *any* enforcement means available in the Code. RCW 48.30.010(5) and (6). It was pursuant to this broad authority that the Commissioner, to combat unfair trade practices in the title insurance industry, adopted WAC 284-30-800 in 1988, and

⁶ In 1947, the Legislature increased the Commissioner's regulatory authority by enacting its version of the model Unfair Trade Practices Act. RCW 48.30.010-.250 (former 45.30.01 *et seq.*). This included the Illegal Inducements law, RCW 48.30.150(1)(c). *See also* McCarran-Fergusson Act, Public Law 15, 79th Congress, Sec. 2 (codified as 15 U.S.C. §1012(a)/(b)).

brought the instant enforcement action against Chicago. *See* Sec. III.A, *infra*.

The courts give deference to the Commissioner's view of what is reasonably required to address unfair practices in the industry. In *Omega National Ins. Co. v. Marquardt*, 115 Wn.2d 416, 423, 799 P.2d 235 (1990), the court addressed the Commissioner's extensive rulemaking authority to define practices as unfair or deceptive, and concluded:

The Insurance Commissioner has broad powers over the control, supervision and direction of the insurance business. The Legislature, by enacting RCW 48.30.010(2), has granted the Commissioner the authority to define various acts or practices as unfair or deceptive. Where the Legislature has specifically delegated to an administrator the power to make regulations, such regulations are presumed valid... Judicial review is limited to a determination of whether the regulation in question is reasonably consistent with the statute being implemented.

(quoting *Federated Am. Ins. Co v. Marquardt*, 108 Wn.2d 651, 654-55, 741 P.2d 18 (1987).

The Commissioner's rulemaking power "vest[s] the Commissioner with broad power to interpret, clarify and implement legislative policy," in order to advance "the public policy to protect policy holders from abuses by insurance companies." *Omega* at 427. This broad power clearly includes authority over insurers as well as agents, because insurers are "persons" under the Insurance Code, which also governs "[a]ll insurance

and insurance transactions in this state, ... and *all persons* having to do therewith are governed by code.” RCW 48.01.070; RCW 48.01.020 (emphasis added).

Accordingly, the Commissioner was well within both reason and his authority to adopt a regulation - WAC 284-30-800 – and to remind insurers therein that they are responsible under the Insurance Code for the unfair or deceptive practices of their agents related to the solicitation of title insurance. As set forth in the following section, the Insurance Code makes insurers responsible to the acts of their agents. Moreover, if the Commissioner did not have the power to hold insurers responsible, title insurers could easily avoid accountability for illegal practices by the simple expedient of appointing an agent. The Commissioner reasonably determined that a fair way to regulate the solicitation of title insurance sales was to adopt a regulation that made clear that it would be administratively enforced in a manner holding both the insurer and the agent responsible for unfair acts or practices under RCW 48.30.010.

The Washington Supreme Court has recognized that the power to define unfair practices under RCW 48.30.010(2) is a “tool” the Commissioner uses to protect the insurance buying public. *Omega* at 427. “Insurance, as a business affected by the public interest, is subject to extensive regulations. . . In construing [its] statutes, the primary objectives

are to effectuate legislative intent, ascertained from the statutory context as a whole, and to avoid unjust or absurd consequences.” *Armstrong v. Safeco Ins. Co.*, 50 Wn. App. 254, 259, 748 P.2d 666 (1988). To adopt Chicago’s argument about the absence on the Commissioner’s authority over insurers using agents would thwart that legislative intent by rendering insurers effectively immune for the illegal acts of their agents in an enforcement action.

2. The Insurance Code makes insurers responsible for solicitations of insurance applications by their agents.

Despite the Commissioner’s broad authority, Chicago argues that the Final Order should have applied the common law of agency, rather than the statutory definitions of the insurer-agent relationship enacted in the Insurance Code, to determine the existence and scope of the insurer-agent relationship between Chicago and Land Title. *Chi.Br.* at 3, 5, 23-4, 28-31, 38-48, 50.

However, the *existence* of an agency relationship between an insurer and an agent is established as a matter of law when the insurer appoints the agent pursuant to RCW 48.17.160. Whether acts fall within the *scope* of an insurance agent’s authority is governed by RCW 48.17.010, which defines an insurance agent, and RCW 48.01.060, which defines insurance transactions. The Final Order recognized this and

properly analyzed the stipulated violations of Land Title under the Insurance Code, and held Chicago responsible for Land Title's solicitations. AR 118-167 (*Final Order*); *Id.* at 128 (FF 3); 145 (FF 29), 146-7 (FF 33).

The Insurance Code first defined by statute both the existence and the scope of agency relationships in the business of insurance in 1911. That statute defined an "agent" as an entity "duly appointed and authorized by an insurance company" to "solicit applications for insurance". Session Laws, 1911, Ch. 49 [S.S.B. 6], Rem. Code § 6059-2; *see also Reynolds v. Pacific Marine Ins. Co.*, 105 Wash. 666, 671, 178 Pac. 811 (1919). An agent appointment process was enacted that same year. Rem. Code § 6059-45.⁷ This 1911 definition of "agent" is essentially the same definition of "agent" applicable to this case: "'Agent' means any person appointed by an insurer to solicit applications for insurance on its behalf..." RCW 48.17.010.⁸

In discussing the 1911 insurance agent definition, the Washington Supreme Court held that the Insurance Code was passed for the purpose of

⁷ The 1911 insurance code statutes cited herein are attached as *Appendix C*.

⁸ This definition of "agent" applied prior to July 1, 2009, the period of time at issue in this case. After that date, a new but very similar definition for "title insurance agent" alone went into effect: "[T]itle insurance agent' means a business entity licensed under the laws of this state and appointed by an authorized title insurance company to sell, solicit, or negotiate insurance on behalf of the title insurance company." RCW 48.17.010(15) (2009).

closely regulating the entire insurance relationship and to clearly define an insurance company's duties and liabilities:

In 1911, the legislature passed the insurance code, which is a complete act in itself and *was intended to cover the entire insurance relationship...*the [insurance] code expressly provides who shall be agents of the company, and *was passed for the purpose of clearly defining the insurance company's duties and liabilities.* It was error, therefore, for the court to leave to the jury, as a question of fact for it to determine, the status of Fraser, and *it should have been determined, as a matter of law, that Fraser was either the agent[,] or broker* representing the respondent, and any knowledge he had or representations he made were the knowledge and representations of the respondent.

Day v. St. Paul Fire & Marine Ins. Co., 111 Wash. 49, 53-54, 189 Pac. 95 (1920) (emphasis added). Where the underlying actions of the agent are undisputed, the 1911 statute made determining the scope of agency in insurance transactions a pure issue of law settled by the Insurance Code. *Id.*⁹

Similarly, when the Insurance Code was revised and re-enacted in 1947, RCW 48.17.160 expanded on the statutory method formerly set forth in Rem. Code §§ 6059-44,-45 establishing the existence of the relationship between an insurer and its agent through an appointment process:

⁹ Prior to the 1911 Code, the question as to whether an individual actually was the agent of an insurer was (as Chicago proposes the present inquiry should be) a fact-intensive jury question analyzed under the common-law. *Cf. Staats v. Pioneer Ins. Ass'n*, 55 Wash. 51, 69 104 Pac. 185 (1909) (jury question as to whether an insurance agent had authority to represent a fire insurance company).

Appointment of agents — Approval — Termination — Fees.

(1) An insurance producer or title insurance agent shall not act as an agent of an insurer unless the insurance producer or title insurance agent becomes an appointed agent of that insurer. An insurance producer who is not acting as an agent of an insurer is not required to become appointed.

(2) To appoint an insurance producer or title insurance agent as its agent, the appointing insurer shall file, in a format approved by the commissioner, a notice of appointment within fifteen days from the date the agency contract is executed or the first insurance application is submitted, whichever is earlier.

...

(5) Contingent upon payment of the appointment renewal fee as set forth in RCW 48.14.010, an appointment shall be effective until terminated by the insurer, insurance producer, or title insurance agent and notice has been given to the commissioner as required by RCW 48.17.595.

RCW 48.17.160.

The current statutes, RCW 48.17.010 (definition of agent) and RCW 48.17.160 (appointment of agent), are substantially similar to their 1911 predecessors, Rem. Code §§ 6059-2 and 6059-45.¹⁰ Therefore, under the rules of statutory construction, the newer statutes are construed as continuations of the older. RCW 1.12.020 (“The provisions of a statute, so far as they are substantially the same as those of a statute existing at the time of their enactment, must be construed as continuations thereof.”). As interpreted by the court in *Day*, these statutes create, as a matter of law, the agency relationship between the insurer and the agent. *Day*, 111

¹⁰ The modern statutes applicable to the relevant time period for the instant case are attached as *Appendix D*.

Wash. at 53-54. By precisely delineating what it takes to create a principal-agent relationship between an insurer and an agent, and defining acts within the scope of that agency, the Legislature eliminated the need for an extensive, case-by-case common law fact analysis to establish the legal responsibilities of the insurer for the acts of its appointed agents.

In order to effectively regulate insurers that solicit through agents, it is necessary for the Commissioner to hold the insurers responsible for their agents. Corporations are abstract entities who can only act through agents. *Lloyd Enterprises, Inc. v. Longview Plumbing & Heating Co., Inc.*, 91 Wn. App. 697, 701, 958 P.2d 1035 (1998), *review denied*, 137 Wn.2d 1020 (1999). Although Chicago argues it did not control its agent Land Title, there is no statutory safe harbor for insurers who appoint agents and then fail to exercise control over them. Neither RCW 48.17.010 (definition of agency) nor RCW 48.17.160 (appointment statute) include an exception allowing the insurer to disclaim responsibility for its agent.

In summary, the Insurance Code defines the scope of the agency relationship between the insurer and the agent, establishes that relationship through the appointment process, and makes the insurer accountable for solicitations of its agent in violation of the code. The Commissioner's authority to regulate insurers, define unlawful insurance trade practices, and regulate insurance transactions, includes the power to hold insurers

legally responsible for regulatory violations committed in soliciting insurance.

3. Since the nineteenth century, other states have also defined by statute the principal-agent relationship between insurers and insurance agents.

It is common for state legislatures to enact insurance codes that define the relationship between an insurer and its agent, and which make the insurer responsible in all respects for the acts of the agent. Numerous states have deterred attempts by insurers to evade legal responsibility for their agents' actions using common law doctrines and contract clauses:

Statutes in several states expressly declare that a person who solicits applications, makes contracts, collects premiums, etc., shall *prima facie* be deemed to be the agent of the company whatever the policy or the application may say about it.

Mechem on Agency, § 1071, p. 773 (2nd Ed. 1914) (citations omitted).¹¹

In an early example of this, the Supreme Court of Wisconsin interpreted a statute which, like Washington's former and current statutes, did not expressly address "vicarious liability":

Section 1977, Rev. St., in substance, provides that whoever solicits insurance on behalf of any insurance corporation, or transmits an application for insurance, or a policy of

¹¹ Prof. Mechem's 1914 treatise identified over a dozen states where such statutes were upheld on appeal, including Wisconsin, one of the first states to enact such a statute. Presumably, Washington was not included in that list because although Rem. Code, § 6059-2 was enacted in 1911, it was not cited in an appellate opinion until 1919. See *Reynolds v. Pacific Marine Ins. Co.*

insurance to or from any such corporation...shall be held an agent of such corporation to all intents and purposes...

The Wisconsin Court nevertheless held that the statute makes insurers liable for their agents' acts:

But it is said that it was unreasonable to make the defendant responsible for the acts of Lawson, who was never authorized to act for it or bind it in any way. The answer to this objection is, the legislature has assumed the right to regulate the business of insurance and prescribe the manner it shall be conducted in this state... The obvious intention of the legislature is to make an insurance company responsible for the acts of the person who assumes really to represent and act for it in these particulars, and to change the rule of law that the insured must at his peril know whether the person with whom he is dealing has the power he assumes to exercise, or is acting within the scope of his authority.

Schoener v. Hekla Fire Ins. Co., 50 Wis. 575, 7 N.W. 544, 546-7 (1880) (emphasis added).¹²

The common law may be modified by statute, and when such statutes are enacted “[t]he question presented is one of statutory interpretation, not one of common law agency.” *Barendregt v. Walla Walla School Dist. No. 140*, 87 Wn.2d 154, 157-8, 550 P.2d 525 (1976).

In order to overcome the difficulty in regulating the business practices of

¹² Wisconsin’s *Schoener* opinion was cited with approval in *Paulson v. Western Life Ins.*, 636 P.2d 935, 946, 292 Or. 38 (1981), where the Oregon supreme court recognized state insurance laws adopted to address attempts by insurers to escape liability for the acts and knowledge of their agents. *Paulson*, 636 P. 2d 945-947. As noted in the Final Order, the reasoning of *Paulson* was in turn adopted by the Washington Supreme Court in *National Federation of Retired Person v. Insurance Comm’r*, 120 Wn.2d 101, at 110-11, 838 P.2d 680 (1992). AR 154-5 (FF 11).

insurers under the common law of agency, for over a century various states have enacted statutes dictating when an agency relationship is created, and the scope of that agency, to ensure insurers are responsible for the acts of their agents. Washington is one such state.

B. The Commissioner May Hold Chicago Responsible For Its Appointed Agent's Admittedly Illegal Insurance Solicitations Of Applications On Chicago's Behalf

1. Chicago conceded Land Title was its lawfully appointed insurance agent under RCW 48.17.160 at the time the regulation was violated.

As recognized in the Final Order, Chicago was under no obligation to appoint Land Title or any other particular entity as an agent, or any agents at all. AR 125-7 (FF 1), 153-4 (CL 11), 163-4 (CL 28). Chicago could have appointed any qualified title insurance agent, or chosen to do business solely through its employees by soliciting its own insurance contracts, without appointing agents, which in fact Chicago does in most counties in Washington. AR 513.

Here, there is no dispute that Chicago officially appointed Land Title as its agent under the appointment statute. *Chi.Br.* at 22.¹³ Using the statutory appointment process, Chicago registered Land Title as its agent by filing a notice of appointment of agent with the Commissioner on March 5, 1993. RCW 48.17.160(2); AR 355, 371-2, 126 (FF 1). Chicago

¹³ See, e.g., AR 498-9 (Declaration of Kennedy admitting "Land Title is an insurance agent," and has "an Issuing Agency Agreement with Chicago....").

paid a fee to the Commissioner when it filed the notice of appointment of that agent, and periodically thereafter ever since. RCW 48.17.160(4); AR 126 (FF 1). A principal-agent relationship between the two entities was established as a matter of law and a made public record.¹⁴ AR 153-4 (CL 11), 166 (CL 36).

2. Insurers are responsible for their agents' illegal inducements paid to title insurance middlemen because under RCW 48.17.010, the agent is soliciting applications of insurance on the insurer's behalf.

By definition, an “agent” is appointed by the insurer for the purpose of soliciting insurance applications. RCW 48.17.010. WAC 284-30-800 applies to inducements paid in order to “place” title insurance. The regulation prohibits such payments “as an inducement, payment, or reward *for placing or causing title insurance business to be given to the title insurer.*” WAC 284-30-800(2) (emphasis added). WAC 284-30-800(1) clearly states that “RCW 48.30.140 and 48.30.150, prohibiting “rebating” and “illegal inducements,” are applicable to *title insurers and their agents.*” (emphasis added).¹⁵ The regulation expressly indicates the

¹⁴ Consumers have had free internet access to agent appointment information since 2004, currently at <http://www.insurance.wa.gov/consumertoolkit/search.aspx>. See also AR 355 (Chicago appointment information showing Land Title).

¹⁵ The “Statement of Purpose” published in the state register made the identical point, stating the proposed rule would “substantially limit *title insurers and their agents* from giving or offering gifts to persons who could influence others in their selection of a title insurer.” WSR 88-07-072, p. 178 (emphasis added).

Commissioner's intent to enforce it in a manner that would hold insurers responsible for their agents' actions.

Because the regulation applies to payments relating to placing insurance with a title insurer, there can be no question that when an agent for a title insurer makes such a payment, that agent is soliciting the sale of title insurance. The terms "solicit" and "solicitation" are broadly defined in the Insurance Code. *See National Federation*, where the court adopted the Black's Law Dictionary definition of "solicit": "to appeal for something, to tempt, to lure, to awake or excite to action, or to invite." 120 Wn.2d 101 at 112 (internal quotes, ellipses omitted).¹⁶ Making a payment or gift in order to place insurance is clearly for the purpose of tempting the insured to select a particular title insurer. There can be no question that when an agent for a title insurer pays or gives an inducement to place insurance, that agent is soliciting title insurance policies on behalf of an insurer. The Final Order correctly concluded as a matter of law that violations of the illegal inducement regulation are, by definition under RCW 48.17.010, solicitations of insurance applications on the insurer's behalf, and therefore attributable to the insurer. AR 158-9 (CL 16).

¹⁶ In *National Federation*, the Washington Supreme Court determined that distribution of free insurance pamphlets constituted solicitation. 120 Wn.2d at 110-12.

3. Because Chicago stipulated Land Title violated WAC 284-30-800, as a matter of law, Chicago is responsible for those illegal solicitations of insurance by its agent.

Chicago assigns error to the parts of the Final Order accepting its stipulation that Land Title committed multiple violations of the illegal inducement regulation in 2007-2008.¹⁷ In fact, much of Chicago's argument is based on its mistaken assertion that the Final Order found Chicago responsible *solely* because Land Title was its appointed agent under RCW 47.17.160. *See Chi.Br.* at 20 *et seq.*, 28. Chicago fails to acknowledge that this legal conclusion was based on the stipulated, and therefore undisputed, fact that Land Title *did* violate the illegal inducement regulation.¹⁸ Since Chicago admitted Land Title's violations for purposes of its motion for summary judgment, the stipulation settling the issue of the regulatory violations should be respected on appeal, as agreements limiting the issues are favored and enforced unless good cause is shown to the contrary. *Smyth Worldwide Movers, Inc. v. Whitney*, 6 Wn. App. 176, 491 P.2d 1356 (1971). Chicago's claims of error in the acceptance of its own stipulation should be rejected.

¹⁷ *Chi.Br.* at 3 (FF 2, 3). AR 127 (FF 2, 3, CL 4, adopting stipulated violation); *see also* AR 279 (ALJ initial order accepting stipulation, FF 2, 3); AR 482 (*Motion for Summary Judgment*).

¹⁸ AR 127 (FF 2, 3, adopting stipulated violation), 149 (CL 4, same); *see also* AR 279 (ALJ initial order accepting stipulation, FF 2, 3); AR 482 (*Motion for Summary Judgment*). Also, Chicago later settled that issue entirely by agreeing to pay a fine to the Commissioner should it lose the instant appeal. *Appendix B*; *see also* Exhibit A to *Declaration of Victor M. Minjares in Support of Commissioner's Motion for Judicial Notice* (certified copy of same).

Chicago also implies Land Title might have been soliciting only escrow business, not title insurance business, so imputation was unwarranted. *Chi.Br.* at 6, 8-9. But the purpose of the illegal inducement regulation was to limit inducements to title insurance middlemen, and Chicago's knowledge of the ongoing illegal inducement problem in its own title insurance solicitations was well-established in the administrative record. Secs. III.A-B, *supra*. Further, it was undisputed that throughout their entire relationship, Land Title only sold Chicago's title insurance. AR 130, 134-6 (FF 6, 12, 13). Therefore, the Commissioner's regulatory enforcement action here was reasonable in light of the fact that Chicago was the sole beneficiary of Land Title's solicitations of insurance applications from title insurance middlemen in violation of WAC 284-30-800.

The stipulation that Land Title violated WAC 284-30-800 eliminated any possible dispute that the Land Title's activities were anything but acts of insurance within the regulatory authority of the Commissioner. Because there was no factual dispute that Chicago's appointed agent was Land Title, that Land Title sold no insurance other than Chicago's, or that Land Title violated the illegal inducement regulation, the Final Order properly concluded as a matter of law that

Chicago is responsible in an enforcement action for Land Title's violations. AR 163-4 (CL 28), 166 (CL 36, 37), 167 (Order).

C. Chicago's Contract Does Not Allow It To Evade Responsibility For Its Appointed Agent's Illegal Solicitations

First, the Court should reject Chicago's argument that Land Title was not "soliciting" on Chicago's behalf, on the theory that its contract with Land Title does not contain the word "solicit." *Chi.Br.* at 27-8. By definition, insurers appoint agents to solicit insurance applications. RCW 48.17.010. Inducements to middlemen, whether paid directly by the insurer or by its agent on its behalf, are made with the hope or expectation of generating title insurance applications. Such inducements are clearly "solicitations" encompassed by RCW 48.17.010 and WAC 284-30-800(3).

Contrary to the implication in Chicago's brief, RCW 48.17.010 and WAC 284-30-800 make no exception for insurance applications solicited through middlemen, rather than directly from potential insureds. *Chi.Br.* at 27-8. As noted above, the terms "solicit" and "solicitation" cover a broad range of activities. *National Federation of Retired Persons*, 120 Wn.2d 101, 112, 838 P.2d 680 (1992) ("solicit" means "to appeal for something, to tempt, to lure, to awake or excite to action, or to invite"). In

short, “solicitation,” is very broadly defined as any attempt of an agent to bring in insurance business.¹⁹

Second, Chicago argues that Land Title was not “soliciting” because its contract with Land Title contains the word “market” not “solicit”. Although “market” and “marketing” are undefined by the Insurance Code, the same legal dictionary used in *National Federation*²⁰ shows that “marketing” is very similar to solicitation. (“**Marketing**, *n.* 1. The act or process of promotion and selling, leasing, or licensing products or services.” *Black’s Law Dictionary* 990 (8th ed., 2004)). The Court should reject the attempt to recast “soliciting” insurance as something different than “marketing” insurance, because the two words are synonymous. *Chi.Br.* at 27-8.

The Commissioner does not contend, as Chicago asserts, that the administrative inquiry ends once proof of appointment of the agent under RCW 48.17.160 is presented. (*See, e.g., Chi.Br.* at 20, *et seq.*). Under the Insurance Code, an insurer is not responsible to the Commissioner for every conceivable act of its agent; only those acts that fall within the scope of agency as defined in Code, such as solicitation of insurance applications. Because Land Title’s violations of WAC 284-30-800 were

¹⁹ In *National Federation*, the word “solicitation was interpreted in the context of a different section of the Insurance Code, the definition of “insurance transactions” contained in RCW 48.01.060. 120 Wn.2d at 110-12.

²⁰ *National Federation*, 120 Wn.2d at 112.

stipulated to and are verities for purposes of this appeal, Chicago is liable. AR 154 (CL 11).

Third, Chicago argues that, because its agency contract with Land Title forbid violations of state regulations, it cannot be held responsible for Land Title's unfair trade practices. This argument is incorrect. Chicago could have enforced that provision of the contract, and presented no evidence showing it could not – only that it did not. AR 139-40 (FF 20); *infra* at Sec. V.D.2. In *Pagni v. New York Life Insurance Co*, 173 Wash. 322, 23 P.2d 6 (1933), the insurer argued it was not responsible for misrepresentations made by its long-time agent, because the agent “was governed by his written authority issued to him by the insurer; and that, as such agent ... had no power to waive any provision of the policy.” The court rejected the argument:

As in the case of agencies in general, **an insurance company is bound by all acts**, contracts, or representations **of its agent**, whether general or special, which are within the scope of his real or apparent authority, **notwithstanding they are in violation of private instructions or limitations upon his authority**, of which the person dealing with him, acting in good faith, has neither actual nor constructive knowledge.

Id., 173 Wash. at 349-350 (internal quotes omitted, emphasis added).²¹

²¹ *Accord, Lamb v. General Associates, Inc.*, 60 Wn.2d 623, 627, 374 P.2d 677 (1962) (corporations bound by acts of agent beyond scope of actual authority); *Peninsular Savings & Loan Ass'n v. C. J. Breier Co.*, 137 Wash. 641, 645-6, 243 P. 830

Moreover, insurers are bound by the acts of their agents, even if the agents are in violation of the private limitations of their authority. *Fletcher v. West American Ins. Co.*, 59 Wn. App. 553, 558, 799 P.2d 740 (1990), *review denied*, 117 Wn.2d 1006, 815 P.2d 265 (1991). A private contract between the insurer and the appointed insurance agent does not alter the rights and responsibilities set forth in the Insurance Code. *See* AR 134 (FF 12). The Final Order correctly ruled that although the contract may give Chicago a right of indemnification against Land Title, it cannot affect Chicago's legal responsibility to the Commissioner for regulatory violations by its agent. AR 141-2 (FF 23); 144-5 (FF 28-9), 158 (CL 16), 162-3 (CL 26).

D. Alternatively, Chicago Was Responsible For Its Agent Under Common Law Agency Doctrines

To affirm the Final Order, the Court need not address Chicago's arguments about common law theories of agency, because insurers' responsibility for their agents' solicitations is established by statute (RCW 48.17.160, 48.17.010), regulation (WAC 284-30-800), and the underlying acts themselves. However, if the Court does address Chicago's arguments regarding common law agency principles, the doctrines of apparent and actual authority would nevertheless render Chicago responsible for its

(1926); *accord*, *Brace v. Northern Pac. Ry. Co.*, 63 Wash. 417, 419, 115 P. 841 (1911); *Livieratos v. Commonwealth Security Co.*, 57 Wash. 376, 379-80, 106 P. 1125 (1910).

agent's unfair practices in an enforcement action, and the Final Order could be upheld on that alternate basis.²²

Under the common law, an agent's authority may be one of two types - actual authority, or apparent authority. *King v. Riveland*, 125 Wn.2d 500, 507, 886 P.2d 160 (1994).²³ Both actual authority and apparent authority depend upon objective manifestations issued by the principal regarding an agent's authority, but "[w]ith actual authority, the principal's objective manifestations are made to the agent; with apparent authority, they are made to a third person." *King*, 125 Wn.2d at 507 (apparent authority inferred from principal's acts, not the agent's acts).

1. Chicago was responsible for its agent under the common law agency doctrine of apparent authority.

The Final Order found Chicago responsible for Land Title's violations under the common law agency doctrine of apparent authority. AR 157 (CL 14); AR 162-4 (CL 26, 28). Apparent authority exists where the principal makes objective manifestations of an agent's authority *to a third party* who then relies upon that representation. *Smith v. Hansen, Hansen & Johnson*, 63 Wn. App. 355, 363-4, 818 P.2d 1127 (1991); *see*

²² AR 152-3 (CL 9, actual and apparent authority argued in alternative); AR 157 (CL 14, alternatively, Chicago is a principal under doctrine of apparent authority); AR 157 (CL 14, Chicago-Land contract evidenced actual authority), AR 162 (CL 26, if common-law applicable, Chicago is principal under apparent authority).

²³ Appellate opinions sometimes refer to "apparent authority" as "ostensible authority" or "agency by estoppel." *Lamb v. General Assocs., Inc.*, 60 Wn.2d 623, at 627-28, 374 P.2d 677 (1962). For clarity, the term "apparent authority" is used herein.

also *American Seamount Corp. v Science and Engineering Assoc.*, 61 Wn. App. 793, 797, 812 P.2d 505 (1991) (same).

Here, it is undisputed that in 1993, Chicago formally notified the Commissioner that Land Title was its appointed insurance agent. AR 355, 372. Chicago made no restriction or qualification to the Commissioner as to the scope of the appointment of Land Title as its agent for solicitation of title insurance. AR 355. In bringing this enforcement action, the Commissioner reasonably relied on Chicago's continuing representations that Land Title was its agent as to the solicitation of insurance in Kitsap County. AR 545-6, 565. Where the material facts are undisputed, a grant of summary judgment to the nonmoving party is appropriate. *Impecoven v. DOR*, 120 Wn.2d 357, 841 P.2d 752 (1992). Under these facts, apparent authority applies. This is, therefore, an alternative basis for this Court to affirm the Final Order.

Chicago fails to show how apparent authority could be in dispute given the undisputed facts stated above. Although Chicago claims there is an issue of fact, its Brief addresses allegedly disputed facts that could only be material as to "actual authority", not apparent authority. *Chi.Br.* at 5, 11-13, 17-18, 20-30.²⁴ Moreover, the phrase "apparent authority" appears

²⁴ Chicago argues that granting summary judgment to the Commissioner was improper by citing a case where evidence of apparent authority was ambiguous and

only once in Chicago's brief, in a footnote.²⁵ Chicago does not brief the legal concept of apparent authority, or show how there is a dispute of facts relevant to apparent authority. As Chicago did not brief this legal conclusion, the argument is effectively conceded. *Collins v. Clark County Fire Dist. No. 5*, 155 Wn. App. 48, at 95-6, 231 P.3d 1211 (2010) (arguments insufficiently briefed need not be considered).

2. Chicago's was responsible for its agent under the common law agency doctrine of actual authority.

The Final Order also concluded, alternatively, that Chicago granted actual authority to Land Title based on the undisputed facts of its voluntary appointment by Chicago, Land Title's acceptance of the appointment, Chicago's funding of Land Title, and the written contract terms showing Chicago's control over Land Title.²⁶ The Court should

disputed. *Ranger Ins. Co. v. Pierce County*, 164 Wn.2d 545,555-6, 192 P.3d 886 (2008). But Chicago does not address what evidence of apparent authority is in dispute here.

²⁵ *Chi.Br.* at 48, n.12.

²⁶ AR 125-7 (FF 1) (lists most undisputed facts, including appointment), 132-3 (FF 10) (Land Title collects premium for Chicago, keeps 82%); 134 (FF 12) (Land writes title policies for Chicago only, collects premium), 135-6 (FF 13) (all of Land Title's solicitations of insurance are on behalf of Chicago), 136-7 (FF 15) (Chicago's contractual right to examine Land Title records, directive to Land Title to preserve documents), 138 (FF 17, 18) (Chicago-Land Title contract shows right of control as appointing insurer, order to agent to observe regulations, order to use Chicago forms), 139-40 (FF 20) (Chicago contractual right to control Land Title), 140-1 (FF 21) (Land collects premium, keeps 82%), 153 (CL 11, Chicago voluntarily appointed Land as soliciting agent), 154-5 (CL 12, contract shows principal-agent relationship under common law between Chicago and Land Title, admitted behavior between two shows same), 161 (CL 24, Chicago had right to control Land Title under common law based on contract), 163-4 (CL 28, Chicago voluntarily appointed Land Title as soliciting agent).

reject Chicago's arguments that it did not grant Land Title actual authority to solicit title insurance.

First, Chicago discusses *Stephens v. Omni Ins. Co.*, 138 Wn. App. 151, 159 P.3d 10 (2007) (and similar cases) for the proposition that in order for an agency relationship to exist, the principal's "right of control" over the agent must be established. These cases are inapposite because they involve common law agency, but not in the context of the insurer-insurance agent relationship as defined by the Insurance Code. In *Stephens*, insurer Omni retained a debt collector which then acted illegally. *Id.* at 158. The plaintiffs argued (among other theories) that Omni was vicariously liable for the debt collector's acts because the debt collector was Omni's agent under common-law agency theory. *Id.* at 183. Omni successfully argued that the debt collector was an independent contractor Omni did not control. *Id.* However, Omni's debt collector was not an appointed insurance agent, so RCW 48.17.010 and RCW 48.17.160 did not apply. *Id.* *Stephens*, and the other cases cited by Chicago, did not involve statutes defining the insurer-agent relationship. Thus, they are unhelpful in analyzing whether the Commissioner has the statutory authority to hold insurers responsible for illegal solicitations by their agents.

Second, Chicago's proposed "exercise of control" standard for determining whether actual authority exists fails on both legal and factual grounds. *Chi.Br.* at 41 45. It fails legally because the appropriate test for determining whether vicarious liability exists under the actual authority doctrine is not exercise of control, but the *right* to exercise control. In *Kamla v. Space Needle*, 147 Wn.2d 114, 52 P.3d 472 (2002), the plaintiff argued (as Chicago implicitly argues here) that "actual control" by the principal was necessary in order to create a principal-agent relationship. *Id.* at 120. The *Kamla* court rejected that view, holding that it is the right to control that creates common law agency, even when that right is not exercised. *Id.* at 121.

Chicago's "exercise of control" argument fails on factual grounds because the administrative record reflects that Chicago's declarants never stated that Chicago had no *right* of control or right to monitor Land Title. Its declarants stated only that Chicago did not *exercise* any power over Land Title. "[Chicago] does not play any role in or exercise any control over Land Title..." AR 499 (*Kennedy Decl.*, ¶9). Chicago submitted a declaration from one of its vice presidents that failed to address whether either an agency relationship or an independent contractor relationship between Chicago and Land Title existed. AR 515 (*London Decl.*). And no declarant stated that Land Title was an independent contractor of

Chicago. To the contrary, Mr. Kennedy admitted “Land Title is an insurance agent,” and has “an Issuing Agency Agreement with Chicago....” *Id.* at ¶¶2, 5, AR at 498-9.

A party can not defeat summary judgment by arguing an immaterial issue of fact. *Fischer-McReynolds v. Quasim*, 101 Wn. App. 801, 6 P.3d 30 (2000). Under the common law, it is the *right* of control that determines when an agency exists, not whether control is actually *exercised*. Because Chicago’s declarations did not disclaim its right of control over Land Title, the evidence demonstrating Chicago’s right of control over Land Title was not rebutted by the immaterial dispute over whether control was actually exercised.²⁷

In conclusion, Chicago’s argument regarding the extent of its control over Land Title is a red herring. The material legal issues are settled by the Insurance Code and, in the alternative, the contract between Chicago and Land Title, and the material facts were uncontested. The Final Order correctly determined Chicago was responsible for Land Title’s illegal solicitations under RCW 48.17.160 and RCW 48.17.010 based on stipulated and undisputed facts.

²⁷ For example, Chicago had the contractual right to inspect Land Title’s books, directed Land Title to preserve documents, and had the power to control Land Title through threatened termination of the annually renewable contract. AR 136-7 (FF 15).

3. By failing to control its agent, Chicago breached its duty under RCW 48.01.030 to “preserve inviolate the integrity of insurance.”

Chicago’s admitted failure to monitor or exercise control over its agent was a breach of Chicago’s duties under the Insurance Code. Chicago had an affirmative duty to monitor the actions of its appointed agents in order to ensure the business of insurance was preserved inviolate. RCW 48.01.030. This affirmative duty is both statutorily and judicially defined. The applicable statute is RCW 48.01.030, which establishes the affirmative good faith duty:

The business of insurance is one affected by the public interest, requiring that all persons be actuated by good faith, abstain from deception, and practice honesty and equity in all insurance matters. *Upon the insurer, the insured, their providers, and their representatives rests the duty of preserving inviolate the integrity of insurance.*

RCW 48.01.030 (emphasis added).²⁸

This high standard applies to title insurers as well. *Campbell v. Ticor Title Ins.*, 166 Wn.2d 466, 209 P.3d 859 (2009). Ticor also attempted to argue the “uniqueness” of title insurance in lessening title

²⁸ Like the appointment and agency statutes, this statute also has a predecessor in the 1911 Insurance Code, which stated in pertinent part that insurance “is public in character and requires that all those having to do with it shall at all times be actuated by good faith in everything pertaining thereto; shall abstain from deceptive or misleading practices, and shall keep, observe, and practice the principles of law and equity in all matters pertaining to such business. Upon the insurer, the insured, and their representatives shall rest the burden of maintaining proper practices in said business.” Rem. Code § 7032.

insurers' duty under RCW 48.01.030, and that argument was expressly rejected by the Washington Supreme Court. *Id.* at 471.

Chicago's claim of actual ignorance of Land Title's unfair trade practice violations through failure to exercise any supervision or control over Land Title is not a defense. Imputation of knowledge from the agent to the insurer is a long-standing rule in Washington insurance regulation. *Day, supra*, at 5; *American Fidelity and Casualty Co. v. Backstrom*, 47 Wn.2d 77, 287 P.2d 124 (1955) (mere fact that agent's interests are not coincident with principal's does not prevent imputation of knowledge if agent is acting in principal's interests); *Miller v. United Pacific Casualty Ins. Co.*, 187 Wash. 629, 636-9, 60 P.2d 714 (1936) (notice given to acknowledged insurance agent, even when agent acts illegally, is still automatically imputed to principal). Even though under its contract, Land Title was not allowed to violate insurance laws and regulations, that does not impact Chicago's knowledge of those violations, because when an agent acts against such instructions, the agent's knowledge is still imputed to the principal. *Dowell, Inc. v. United Pac. Cas. Ins. Co.*, 191 Wash. 666, 682, 72 P.2d 296 (1937); *Miller, supra* at 636-9.

By failing to competently monitor and instruct Land Title, Chicago ignored its legal duty to "preserve inviolate the integrity of insurance." RCW 48.01.030.

E. Chicago's Remaining Arguments Do Not Survive Legal Scrutiny

1. The appellate opinions cited by Chicago are not pertinent to the Commissioner's regulatory power over insurers through their appointed agents.

Chicago's brief several times refers to Land Title as an "underwritten title insurance company" or a "UTC", and even submitted a declaration suggesting that these two terms have a special statutory meaning in the state of Washington. *Chi.Br.* at pp. 2-3, 23. However, the Final Order correctly determined that these terms do not appear in the Washington Insurance Code, and were irrelevant to the legal question at hand. AR 128 (FF 4), 131 (FF 9), 144-5 (FF 28, 29), 157 (CL 14). Chicago attempts to import the legal concept of "UTC" from a California statute, and apply it to the Washington Insurance Code, where it has no legal meaning.²⁹

Chicago references several cases that interpret entirely separate titles of the Revised Code of Washington (*e.g.*, Title 82 RCW – Revenue Code) to support its argument that the Insurance Commissioner cannot sanction title insurers under the Insurance Code. *Chi.Br.* at 26-7. However, these tax cases do not involve the Insurance Commissioner's

²⁹ *Id.*; Calif. Ins. Code § 12340.5 ("Underwritten title company' means any corporation engaged in the business of preparing title searches, title examinations, title reports, certificates or abstracts of title upon the basis of which a title insurer writes title policies."); *Randolph Decl.*, AR 515-6 (implication of legal importance of term "UTC").

regulatory authority. See, e.g., *Fidelity Title v. Dep't of Revenue*, 49 Wn. App. 662, 745 P.2d 530 (1987); *First American Title Ins. v. Dept. of Revenue*, 144 Wn.2d 300, 27 P.3d 604 (2001). Instead, they deal with classification of title companies for purposes of the business and occupation tax. *Id.* For instance, *Fidelity* states: “The real issue is not how the insurance commissioner licenses Fidelity, but how the Legislature intended to classify Fidelity for B & O tax purposes.” *Fidelity Title*, 49 Wn. App. at 669. Since regulation of insurers falls under the purview of the Commissioner alone, the Final Order correctly determined that tax law and other cases, as well as the use of the term UTC, are irrelevant to the issue of an insurer’s regulatory liability under the Insurance Code.³⁰

Chicago also cites cases from other states interpreting their own common law of agency, but fails to explain how the statutes of each of those states are analogous to Washington insurance law. Because any similarity to Washington law is not adequately addressed in its brief by argument, those cases should also be disregarded. See *Collins v. Clark County Fire Dist. No. 5* (arguments insufficiently briefed need not be considered).

³⁰ AR 128 (FF 4), 131-2 (FF 9), AR 144 (FF 28), AR 145 (FF 29), AR 157 (CL 14) (UTCs irrelevant under Code).

2. Chicago's arguments regarding RCW 48.94.025 and other statutes are not persuasive as to the proper interpretation of RCW 48.17.010 and 48.17.160.

Chicago contrasts RCW 48.17.010's definition of "agent" with RCW 48.98.025, a statute that gives the Commissioner authority to conduct examinations of managing general agents and hold insurers responsible for the managing general agent's acts. *Chi.Br.* at 24-6. Chicago argues that because the statutes at issue in this case are not drafted the same as RCW 48.98.025, the Commissioner's interpretation here is incorrect. *Id.* Chicago makes similar arguments regarding other statutes, as well.³¹ The Court should reject this attempt to dictate to the Legislature the specific manner in which it must draft statutes to convey its legislative intent.

Drafters of legislation sometimes include language only out of an abundance of caution,³² and not to signal different legislative intent vis-à-vis other statutes.³³ Chicago's arguments are based on the false

³¹ *Chi.Br.* at 24-6 (statutes on commodity trading, usury, etc.).

³² *Lakeside Country Day School v. King County*, 179 Wash. 588, 592, 38 P.2d 264 (1934) (unnecessary statutory proviso "must have been inserted out of an abundance of caution"); *Petersen v. City of Seattle*, 191 Wash. 587, 593, 71 P.2d 668 (1937) (phrase put in statute out of "abundance of caution" rather than intent of legislature to make vacation the exclusive remedy).

³³ The same point applies to Chicago's argument regarding WAC 284-30-610 and WAC 284-30-580. *Chi.Br.* at 34-5. Also, WAC 284-30-610 forbids an insurer from instructing its agent it may solicit in certain prohibited ways, *without any other necessary action by the agent*. Since no actual solicitation by the agent is necessary for an insurer to violate that regulation, the conduct described in WAC 284-30-610 may not, in some circumstances, fall within the definition of an insurance transaction under RCW

assumption that such a comparison can be conclusive as to legislative intent concerning different chapters and titles of the Revised Code of Washington, and statutes enacted many decades apart. RCW 48.98.025 is a good example of the error of Chicago's assumption.

RCW 48.98.025 is identical to a section contained in a model code drafted by the National Association of Insurance Commissioners. 2 Nat'l Ass'n of Ins. Comm'rs, *NAIC Model Laws, Regulations And Guidelines* § 225-1 (2010), section 6 (Managing General Agents Act). The Legislature enacted this statute in 1993, in a bill that contains many other model statutes drafted by that Association. Laws of 1993, chapter 462, section 39. The legislative intent was to support Washington's effort to obtain accreditation from the Association through enacting laws that would create uniformity between selected portions of Washington's Insurance Code and other states' insurance laws. Final Bill Report, SHB 1855, Laws of 1993 ch. 462. The statute cited by Chicago, RCW 48.98.025, authorized the Commissioner to conduct examinations of managing general agents, a specific type of agent.³⁴

48.17.010 and 48.17.160. WAC 284-30-580 is similar in that the mere delivery of an insurance policy may not always constitute an insurance transaction by the agent delivering the policy, particularly if the agent in question is not the policy issuing agent, and is merely acting as a conduit for delivery of the policy on behalf of the insurer. Neither regulation existed at the time of Land Title's illegal inducement violations.

³⁴ "Managing general agent" is defined at length in RCW 48.98.005(3). In short and general terms, a managing general agent produces five percent or more of an

Chicago's arguments should be rejected because there is no reason to conclude that RCW 48.98.025, a statute drafted by a national association and enacted for a specific type of agent, was intended to alter all of the existing provisions of the Insurance Code relating to "agents". Chicago's arguments regarding other statutes are similarly unhelpful.

3. Chicago waived remand on the recusal issue "for all purposes" so it cannot simply re-characterize its argument as an "arbitrary and capricious" claim.

Chicago attempts to resurrect arguments it agreed to waive for all purposes when this matter was on appeal before the Superior Court.³⁵ The order agreed to by Chicago, and entered by the Superior Court, explicitly states "[t]he recusal issue is waived for all purposes and is no longer an issue on appeal." CP at 160. Yet Chicago's brief reargues the bias claim as if it was still in dispute, stating "the propriety" of the ruling "remains before this court in all respects." *Chi.Br.* at 14-16, and at 15, n. 6.

Under the doctrine of invited error, Chicago cannot accept or accede to an alleged error and then complain about it on appeal. *State v. Momah*, 167 Wn.2d 140, 153-54, 217 P.3d 321 (2009); *State v. Aho*, 137 Wn.2d 736, 744-45, 975 P.2d 512 (1999); *State v. Henderson*, 114 Wn.2d

insurer's business, and either adjusts or pays claims in excess of a certain amount to be determined by the commissioner; or negotiates reinsurance on behalf of the insurer.

³⁵ See CP 158-60 (Order Retaining Case and Setting Hearing On *Remaining* Issues) (emphasis added).

867, 870, 792 P.2d 514 (1990) (quoting *State v. Boyer*, 91 Wn.2d 342, 344-45, 588 P.2d 1151 (1979)). Chicago could have had this case remanded and heard by a different hearing officer. Instead, Chicago affirmatively waived the right of remand and the right to argue the issue for all purposes. The invited error doctrine bars Chicago's attempt to revive the issue by cloaking it as an "arbitrary and capricious" claim. *Henderson, supra*, at 869.

Chicago claims that the Final Order is arbitrary and capricious because rulings in the initial order of the Administrative Law Judge ("ALJ") were changed or not adopted. First, this argument fails to recognize that the APA expressly grants a reviewing officer (here, the Chief Hearing Officer) the same decision-making power as the presiding officer (here, the ALJ). RCW 34.05.464(4). This includes the power to set aside the hearing officer's findings and conclusions. *Id.*

Second, there was no fact-finding hearing below; simply a final ruling on a summary judgment motion. The only restriction on a reviewing officer's authority is the requirement that "due regard" must be given to the presiding officer's opportunity to observe the witnesses. RCW 34.05.464(4). But this restriction does not apply to review of an initial order on summary judgment where no witness testimony was taken and, therefore, no credibility determinations were made.

A correct legal conclusion resting upon undisputed material facts cannot be arbitrary and capricious, because a decision is arbitrary and capricious only if it disregards “facts or circumstances”. *Supra* at Sec. IV. Therefore, all that remains of Chicago’s arbitrary and capricious argument is Chicago’s allegation of bias, which it waived for all purposes. Chicago’s arbitrary and capricious claim fails.

4. The Commissioner showed WAC 284-30-800 was reasonable, and no evidence exists on appeal supporting Chicago’s public policy argument to the contrary.

For the first time, Chicago argues WAC 284-30-800 is contrary to public policy.³⁶ Chicago’s Brief provides no citation to the administrative record to demonstrate how Chicago preserved this issue by raising it below. “On review of an order granting or denying a motion for summary judgment the appellate court will consider only evidence and issues called to the attention of the trial court.” RAP 9.12. Chicago’s argument should be rejected on that basis alone.

Even if Chicago had actually presented this argument and supported it with facts, it should not be considered. In a very similar case involving a different insurance unfair trade practice regulation, the insurers’ argument that the challenged regulation was poor public policy

³⁶ *Chi.Br.* at 18, 31-32.

was rejected by the Washington Supreme Court as “beyond the purview of this court”:

The companies also argue that (1) WAC 284-30-500(2)(b) may impose a burden on smaller companies who wish to offer PIP insurance but not in the amounts specified in the rule; and (2) if higher amounts of PIP insurance are required, they should be required in all cases, and not only where an insured requests the higher amounts. *These arguments, however, address the wisdom or desirability of the regulation, and are beyond the purview of this court.*

Federated American Ins. Co. et al. v. Marquardt, 108 Wn.2d 651, 658, 741 P.2d 18 (1987) (emphasis in italics added) (internal cite omitted).³⁷

Finally, the Commissioner presented ample evidence of the reasonableness of the regulation before the trier of fact, addressed in the history and background of WAC 284-30-800. *See* Section III.A., V.B.1.

5. The Final Order is not a “rule” of general application that can be challenged under the APA.

Chicago argues that the Final Order constituted improper “ruling-making” under the Administrative Procedure Act, RCW Ch. 34.05 (“APA”).³⁸ However, “it is axiomatic that for rule-making procedures to apply, an agency action or inaction must fall into the APA definition of a

³⁷ *See also Omega Nat. Ins. Co. v. Marquardt*, 115 Wn.2d 416, 799 P.2d 235 (1990) (“In matters relating to the conduct of the insurance business courts should not substitute their economic beliefs for the judgment of legislative bodies and should defer to the Legislature in the exercise of its police power to accomplish the regulation of unfair or deceptive economic practices.”) (quoting *Fed. Am. Ins. Co.*, 108 Wn.2d at 661.)

³⁸ *Chi.Br.* at 1, 33-38.

rule.” *Budget Rent-A-Car v. Licensing*, 144 Wn.2d 889, 895, 31 P.3d 1174 (2001) (internal citations and quotes omitted).

The issuing of the Final Order was not “rule-making.” A rule is an “agency order...of *general applicability*... .” RCW 34.05.010(16) (emphasis added). Instead, the Final Order is an “order” as defined by the APA. An “order” is “a written statement of *particular applicability* that finally determines the legal rights, duties, privileges, immunities, or other legal interests of a specific person or persons.” RCW 34.05.010(11)(a) (emphasis added). Here, the Final Order describes with finality, as to the particular stipulated violations, only Chicago’s liability for the 2006-2007 illegal solicitations by its appointed agent, Land Title. The Final Order does not make any other insurer liable, only Chicago, the party to the adjudicative proceeding below. The Final Order only applies to the 2006-2007 violations by Land Title, not to any other appointed agents. Under the APA, the Final Order is plainly an “order”, for which there is no requirement to follow rule-making procedures.

The regulation in question, WAC 284-30-800(2), was promulgated through the appropriate APA processes in 1988 and became effective in 1989. AR 471-473-AF. Chicago did not challenge this regulation in this appeal as improperly promulgated, so that issue is waived. Although Chicago argues lack of notice, WAC 284-30-800 plainly states it is

applicable to insurers. Moreover, the evidence in the record shows that Chicago had notice of that interpretation some years earlier. *See generally* cites in Sec. III.B, *supra*.

To the extent that Chicago is making a facial or as-applied constitutional challenge, it fails. The state supreme court has rejected such a sweeping rulemaking requirement, reasoning that such a requirement:

would all but eliminate the ability of agencies to act in any manner during the course of an adjudication. The simplest and most rudimentary interpretation of a statute or regulation would require an agency to go through formal rule-making procedures.... [T]he APA's provisions were not designed to serve as the straightjacket of administrative action.

Budget, supra, 144 Wn.2d at 898.

VI. CONCLUSION

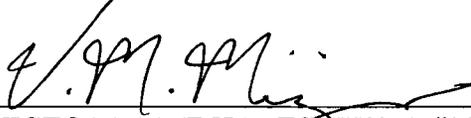
Under RCW 48.17.010, RCW 48.17.160, and WAC 284-30-800, the Commissioner may hold Chicago accountable for its appointed agent's unfair practices. Chicago asks this Court to allow it to profit from the sale of its title insurance, yet accept no responsibility for the illegal practices Chicago admits its appointed agent employed to solicit those profits on its behalf. This is contrary to a century of insurance law in Washington. Under the Insurance Code, providing excessive inducements to title insurance middlemen is an unfair practice harmful to consumers, and Chicago is responsible for illegal solicitations made by its insurance

agents. Chicago stipulated that its appointed agent committed multiple violations of WAC 284-30-800, and later settled that issue of fact for all purposes. Whether the undisputed material facts are considered under the Insurance Code, or the common law of agency, they support the Final Order's legal conclusion that the Commissioner may hold Chicago responsible for Land Title's illegal solicitations.

For these reasons, the Commissioner respectfully requests that the Final Order finding Chicago responsible for the conceded illegal actions of its agent be affirmed.

RESPECTFULLY SUBMITTED this 10th day of January, 2011.

ROBERT M. MCKENNA
Attorney General


VICTOR M. MINJARES, WSBA #33946
Assistant Attorney General
Attorneys for Respondent, Washington State
Office of the Insurance Commissioner

APPENDIX A

284-30-800 Unfair practices applicable to title insurers and their agents. [Statutory Authority: RCW 48.02.060 (3)(a), 48.30.140 , 48.30.150, 48.01.030 and 48.30.010(2). 90-20-104 (Order R 90-11), § 284-30-800, filed 10/2/90, effective 11/2/90. Statutory Authority: RCW 48.02.060 (3)(a). 88-11-056 (Order R 88-6), § 284-30-800, filed 5/17/88.] Repealed by 09-05-077 (Matter No. R 2008-21), filed 2/17/09, effective 3/20/09. Statutory Authority: RCW 48.02.060, 48.29.005 and 48.29.210.

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in connection with any lawful dissemination of information under RCW 43.43.830 through 43.43.840 or 43.43.760.

AMENDATORY SECTION (Amending Order 82-5, filed 10/22/82)

WAC 446-20-310 AUDITS. (1) All employers or prospective employers receiving conviction records pursuant to ((chapter 202, Laws of 1982)) RCW 43.43.815, shall comply with the provisions of WAC 446-20-260 through 446-20-270 relating to audit of the record keeping system.

(2) Businesses or organizations, the state board of education and the department of social and health services receiving conviction records of crimes against persons, disciplinary board final decision information or civil adjudication records pursuant to chapter 486, Laws of 1987, may be subject to periodic audits by Washington state patrol personnel to determine compliance with the provisions of WAC 446-20-300(2).

WSR 88-07-073
PROPOSED RULES
INSURANCE COMMISSIONER
[Filed March 18, 1988]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Insurance Commissioner intends to adopt, amend, or repeal rules concerning limitations as to gifts and inducements from title insurance companies and their agents to persons who are, or may be, in positions to influence the selection of title insurers, by defining unfair or deceptive acts and practices and unfair methods of competition. Note: Consideration will be given to allowing gifts in excess of the \$5 limitation, as proposed. Comments on this issue are solicited;

that the agency will at 9:30 a.m., Wednesday, May 4, 1988, in the John A. Cherberg Building, Hearing Room #1, State Capitol Campus, Olympia, Washington, conduct a public hearing on the proposed rules.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on May 12, 1988, at 2:00 p.m. in the Olympia office of the Insurance Commissioner.

The authority under which these rules are proposed is RCW 48.02.060 (3)(a).

The specific statute these rules are intended to implement is RCW 48.01.030 and 48.30.010(2).

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before May 4, 1988. Mailing address: Insurance Building, AQ-21, Olympia, Washington 98504.

Dated: March 18, 1988
By: Robert E. Johnson
Deputy Commissioner

STATEMENT OF PURPOSE

Title: WAC 284-30-800 Unfair practices applicable to title insurers and their agents.

Purpose: To substantially limit title insurers and their agents from giving or offering gifts to persons who could influence others in their selection of a title insurer.

Statutory Authority: RCW 48.02.060 (3)(a), to effectuate RCW 48.01.030 and 48.30.010(2).

Rebating and illegal inducements are prohibited by RCW 48.30.140 and 48.30.150, and those statutes apply to title insurance companies. However, those statutes primarily affect inducements or gifts to an insured or an insured's employee or representative. They do not directly prevent similar conduct with respect to others who have considerable control or influence over the selection of the title insurer to be used in a real estate transaction. As a result, insureds do not always have free choice or unbiased recommendations as to the title insurer selected.

The effect of the proposed rule is to extend the prohibitions now applicable with respect to gifts or inducements made to insureds, so that similar prohibitions will be applicable with respect to gifts or inducements made to persons who could influence the selection of a title insurance company. Small gifts could still be used to promote a title insurer, but their value would be limited to a set amount per year, in the same manner as RCW 48.30.140(4) applies to gifts from an insurer to an insured. As proposed, the rule would limit the value of any gift to \$5. Our notice of hearing advises that we will consider a higher limit and invites comments from interested persons relative to that issue.

The rule, as proposed, would specifically apply with respect to inducements or gifts to real estate agents, brokers, lawyers, mortgagees, mortgage loan brokers, financial institutions, escrow agents, persons who lend money for the purchase of real estate or interests therein, building contractors, real estate developers and subdividers, and other persons who could influence the selection of a title insurer. The rule would not prohibit payments for legitimate advertising.

Patricia D. Petersen and Robert E. Johnson, Deputy Insurance Commissioners, (206) 753-2406, were responsible for drafting the rule. Edward H. Southon, Deputy Commissioner for Company Supervision, (206) 753-7303, will be primarily responsible for the implementation and enforcement of the proposed rule. Their addresses are Insurance Building, AQ-21, Olympia, Washington 98504.

The rule is proposed by Dick Marquardt, the insurance commissioner, a state public official. The proposed rule is not necessary as the result of federal law or federal or state court action.

Small Business Economic Impact Statement: The proposed rule will have a minor impact on title insurers, large or small. The rule will not increase the cost per employee or per hour of labor, whether the insurer has more or less than fifty employees. To the extent that an insurer now gives gifts or inducements in excess of the value which the proposed rule would allow, it will have a savings. Further, all title insurers, large or small, will

compete more fairly once gifts are controlled as proposed.

NEW SECTION

WAC 284-30-800 UNFAIR PRACTICES APPLICABLE TO TITLE INSURERS AND THEIR AGENTS. (1) RCW 48.30.140 and 48.30.150, pertaining to "rebating" and "illegal inducements," are applicable to title insurers and their agents. Because those statutes primarily affect inducements or gifts to an insured and an insured's employee or representative, they do not directly prevent similar conduct with respect to others who have considerable control or influence over the selection of the title insurer to be used in real estate transactions. As a result, insureds do not always have free choice or unbiased recommendations as to the title insurer selected. To prevent unfair methods of competition and unfair or deceptive acts or practices, this rule is adopted.

(2) It is an unfair method of competition and an unfair and deceptive act or practice for a title insurer or its agent, directly or indirectly, to offer, promise, allow, give, set off, or pay anything of value exceeding five dollars, calculated in the aggregate over a twelve-month period on a per person basis in the manner specified in RCW 48.30.140(4), to any person as an inducement, payment, or reward for placing or causing title insurance business to be given to the title insurer.

(3) Subsection (2) of this section specifically applies to and prohibits inducements, payments, and rewards to real estate agents and brokers, lawyers, mortgagees, mortgage loan brokers, financial institutions, escrow agents, persons who lend money for the purchase of real estate or interests therein, building contractors, real estate developers and subdividers, and any other person who is or may be in a position to influence the selection of a title insurer, except advertising agencies, broadcasters, or publishers, and their agents and distributors, and bona fide employees and agents of title insurers, for routine advertising or other legitimate services.

WSR 88-07-074

ADOPTED RULES

PARKS AND RECREATION COMMISSION

[Order 103—Filed March 18, 1988—Eff. May 15, 1988]

Be it resolved by the Washington State Parks and Recreation Commission, acting at Vancouver, Washington, that it does adopt the annexed rules relating to:

Amd	WAC 352-12-010	Moorage and use of marine facilities.
Amd	WAC 352-12-020	Moorage fees.
Amd	WAC 352-32-035	Campsite reservation.
Amd	WAC 352-32-045	Reservation for group day use.
Amd	WAC 352-32-250	Standard fees charged.
Amd	WAC 352-74-030	Filming within state parks.
Amd	WAC 352-74-040	Film permit application, fees and conditions.
Amd	WAC 352-74-060	Issuance and revocation of film permit.
Amd	WAC 352-74-070	Additional fees and release of bond or damage deposit.

This action is taken pursuant to Notice No. WSR 88-04-075 filed with the code reviser on February 3, 1988. These rules take effect at a later date, such date being May 15, 1988.

This rule is promulgated under the general rule-making authority of the Washington State Parks and Recreation Commission as authorized in RCW 43.51-.040 and 43.51.060.

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW), and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED March 11, 1988.

By Edward T. Luders
Chair

AMENDATORY SECTION (Amending Order 65, filed 3/2/83)

WAC 352-12-010 MOORAGE AND USE OF MARINE FACILITIES. (1) No person or persons shall moor or berth a vessel of any type in a commission owned or operated park or marine area except in designated marine park areas and at designated facilities.

(2) Use of designated marine park areas and facilities by commercial vessels is prohibited except for the loading and unloading of passengers transported for recreation purposes: PROVIDED HOWEVER, Park managers and park rangers may allow extended or night moorage at any facility during the period September 15 through April 30, inclusive, to commercial vessels unloading passengers transported to the park for recreation purposes if in the manager's or ranger's sole discretion sufficient space is reasonably available therefor.

(3) In order to afford the general public the greatest possible use of marine park facilities, continuous moorage at a facility by the same vessel, person or persons shall be limited to three consecutive nights, unless otherwise posted by the commission at any individual facility or area.

(4) In order to maximize usable space at mooring floats, boaters shall, whenever necessary, moor their vessels as close as reasonably possible to vessels already moored. Rafting of vessels is also permitted, within posted limits, but not mandatory.

(5) Use of any state park marine facility shall be on a first-come, first-served basis only. Reserving or retaining space to moor or berth a vessel at any facility, by means of a dinghy or any method other than occupying the space by the vessel to be moored, shall not be permitted.

(6) Dinghies shall be tied up only in designated spaces on moorage floats.

(7) Open flames or live coals, or devices containing or using open flames, live coals or combustible materials, including but not limited to barbecues, hibachis, stoves and heaters, shall be permitted on state park floats or piers only when placed on a fireproof base and the fire is located away from fuel tanks and/or fuel vents. In case of dispute related to fire safety, the ranger shall make final determination.

AMENDATORY SECTION (Amending Order 100, filed 3/23/87, effective 5/15/87)

WAC 352-12-020 MOORAGE FEES. (1) Vessels moored between 3 p.m. and 8 a.m. at those facilities designated by the commission shall be charged a nightly moorage fee during the period May 1 through (Labor

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WSR 88-11-053
NOTICE OF PUBLIC MEETINGS
CONVENTION AND TRADE CENTER
[Memorandum—May 16, 1988]

Notice is given that a special meeting of the board of directors of the Washington State Convention and Trade Center will be held on Tuesday, May 17, 1988, at 3:00 p.m. to discuss: Award of the food service contract; and board retreat. At the conclusion of the agenda, the board will go into executive session.

The meeting will be held in the 5th Floor Conference Room, Marsh McLennan Building, 720 Olive Way, Seattle.

WSR 88-11-054
NOTICE OF PUBLIC MEETINGS
BOARD FOR
VOCATIONAL EDUCATION
[Memorandum—May 12, 1988]

The Washington State Board for Vocational Education will meet on Thursday, June 9, 1988, beginning at 9:30 a.m., in the Robotics Lab at Highline Occupational Skills Center.

People needing special accommodation, please call Patsi Justice at (206) 753-5660.

WSR 88-11-055
PROPOSED RULES
DEPARTMENT OF LICENSING
(Board of Massage)
[Filed May 17, 1988]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Washington State Board of Massage intends to adopt, amend, or repeal rules concerning the repealing of WAC 308-51-070.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on June 21, 1988.

The authority under which these rules are proposed is RCW 18.108.025.

The specific statute these rules are intended to implement is RCW 18.108.025.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before June 21, 1988.

Dated: May 16, 1988
By: Robert A. Van Schoorl
Assistant Director

STATEMENT OF PURPOSE

Name of Agency: Washington State Board of Massage.

Title: Repealing WAC 308-51-070 Communicable diseases.

Description of Purpose: Repealing this section as it is addressed under the Uniform Disciplinary Act chapter 18.130 RCW.

Statutory Authority: RCW 18.108.025.

Summary of Rules: Repealing WAC 308-51-070.

Responsible Personnel: In addition to the Board of Massage, the following professional programs management staff has knowledge of and responsibility for drafting, implementing and enforcing these rules: Patti Rathbun, Program Manager, Department of Licensing, P.O. Box 9012, Olympia, Washington 98504-8001, (206) 753-3199 comm, (206) 234-3199 scan.

Proponents: This rule is proposed to be repealed by Washington State Board of Massage.

Federal Law or State Court Requirements: The proposed rules are not necessitated as the result of federal or state court action.

Small Business Economic Impact Statement: Not required and not provided in that the repeal of this rule does not import small business as that term was defined by RCW 19.85.020.

WSR 88-11-056
ADOPTED RULES
INSURANCE COMMISSIONER
[Order R 88-6—Filed May 17, 1988]

I, Dick Marquardt, Insurance Commissioner, do promulgate and adopt at Olympia, Washington, the annexed rules relating to limitations as to gifts and inducements from title insurance companies and their agents to persons who are, or may be, in positions to influence the selection of title insurers, by defining unfair or deceptive acts and practices and unfair methods of competition.

This action is taken pursuant to Notice No. WSR 88-07-073 filed with the code reviser on March 18, 1988. These rules shall take effect thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2).

This rule is promulgated pursuant to RCW 48.02.060 (3)(a) which directs that the Insurance Commissioner has authority to implement the provisions of RCW 48.01.030 and 48.30.010(2).

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED May 12, 1988.

Dick Marquardt
Insurance Commissioner
By Robert E. Johnson
Deputy Commissioner

NEW SECTION

WAC 284-30-800 UNFAIR PRACTICES APPLICABLE TO TITLE INSURERS AND THEIR

AGENTS. (1) RCW 48.30.140 and 48.30.150, pertaining to "rebating" and "illegal inducements," are applicable to title insurers and their agents. Because those statutes primarily affect inducements or gifts to an insured and an insured's employee or representative, they do not directly prevent similar conduct with respect to others who have considerable control or influence over the selection of the title insurer to be used in real estate transactions. As a result, insureds do not always have free choice or unbiased recommendations as to the title insurer selected. To prevent unfair methods of competition and unfair or deceptive acts or practices, this rule is adopted.

(2) It is an unfair method of competition and an unfair and deceptive act or practice for a title insurer or its agent, directly or indirectly, to offer, promise, allow, give, set off, or pay anything of value exceeding twelve dollars, calculated in the aggregate over a twelve-month period on a per person basis in the manner specified in RCW 48.30.140(4), to any person as an inducement, payment, or reward for placing or causing title insurance business to be given to the title insurer.

(3) Subsection (2) of this section specifically applies to and prohibits inducements, payments, and rewards to real estate agents and brokers, lawyers, mortgagees, mortgage loan brokers, financial institutions, escrow agents, persons who lend money for the purchase of real estate or interests therein, building contractors, real estate developers and subdividers, and any other person who is or may be in a position to influence the selection of a title insurer, except advertising agencies, broadcasters, or publishers, and their agents and distributors, and bona fide employees and agents of title insurers, for routine advertising or other legitimate services.

(4) This section does not affect the relationship of a title insurer and its agent with insureds, prospective insureds, their employees or others acting on their behalf. That relationship continues to be subject to the limitations and restrictions set forth in the rebating and illegal inducement statutes, RCW 48.30.140 and 48.30.150, which continue to limit gifts, payments and other inducements to a five dollar maximum, per person, per year.

WSR 88-11-057
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Health)

[Filed May 17, 1988]

Notice is hereby given in accordance with the provisions of RCW 34.04.025, that the Department of Social and Health Services intends to adopt, amend, or repeal rules concerning definitions, amending WAC 248-19-220;

that the agency will at 10:00, Thursday, June 23, 1988, in the Auditorium, OB-2, 12th and Franklin, Olympia, conduct a public hearing on the proposed rules.

The formal decision regarding adoption, amendment, or repeal of the rules will take place on June 24, 1988.

The authority under which these rules are proposed is RCW 70.38.135.

The specific statute these rules are intended to implement is chapter 70.38 RCW.

Interested persons may submit data, views, or arguments to this agency in writing to be received by this agency before June 23, 1988.

Correspondence concerning this notice and proposed rules attached should be addressed to:

Troyce Warner
 Office of Issuances
 Department of Social and Health Services
 Mailstop OB-33H
 Olympia, WA 98504

Interpreters for people with hearing impairments and brailled or taped information for people with visual impairments can be provided. Please contact the Office of Issuances, State Office Building #2, 12th and Franklin, Olympia, WA, phone (206) 753-7015 by June 9, 1988. The meeting site is in a location which is barrier free.

Dated: May 17, 1988
 By: Leslie F. James, Director
 Administrative Services

STATEMENT OF PURPOSE

This statement is filed pursuant to RCW 34.04.025.

Re: Amending chapter 248-19 WAC.

Purpose of the Change: To revise the definition of home health agency and hospice to comply with legislative intent in the adoption of section 9(2), HB 6271.

These rules are necessary for the orderly administration of the certificate of need program.

Statutory Authority: RCW 70.38.115 and 70.38.135.

Summary of Rule Changes: WAC 248-19-220 Definitions, changes the definition of home health agency and hospice from a functional description to defining a home health agency and hospice as an agency which is or is to be Medicare or Medicaid certified; and makes housekeeping changes to improve the readability of the section.

Person or Persons Responsible for Drafting, Implementation and Enforcement of the Rule: Frank Chestnut, Director, Certificate of Need Program, phone 753-5854, mailstop OB-43E.

These rule changes are not necessary as a result of a federal law, a federal court decision or a state court decision.

Certificate of need program staff believe these rule changes will not have an impact on small businesses.

AMENDATORY SECTION (Amending Order 2344, filed 2/28/86)

WAC 248-19-220 DEFINITIONS. For the purposes of chapter 248-19 WAC, the following words and phrases shall have the following meanings unless the context clearly indicates otherwise.

(1) "Acute care facilities" means hospitals and ambulatory surgical facilities.

(2) "Advisory review agencies" means the appropriate regional health council and, in the case of hospital projects, the hospital commission.

(3) "Affected persons" means:

(a) The applicant(s);

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SEPTEMBER 5, 1990

OLYMPIA, WASHINGTON

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This issue contains documents officially
filed not later than August 22, 1990

RCW 48.18.110. Rates for property, surety, and casualty insurance (chapter 48.19 RCW), and title insurance (RCW 48.29.140) are also approved by this division. Rates may not be excessive, inadequate, or unfairly discriminatory (RCW 28.19.020). Additionally, the insurance commissioner may disapprove rates for disability insurance (RCW 48.18.110), for credit insurance (RCW 48.34.100), and long-term care insurance (RCW 48.84.030), when the rates charged are not reasonable in relation to the benefits conferred. Prima facie acceptable rates have been established for credit insurance (WAC 284-34-010). Contract forms for health care service contractors may be disapproved pursuant to RCW 48.44.020 and health care agreements for health maintenance organizations may be disapproved pursuant to RCW 48.46.060.

(3) Consumer protection division. The deputies in the consumer protection division act as consumer advocates by rendering assistance to consumers who make complaints against insurers. In addition, this division drafts changes to, and interprets issues relative to, the insurance code and its regulations, performs special consumer advocacy functions relating to education of senior citizens, and investigates licensees to insure compliance with the insurance laws and rules of this state. This division has primary responsibility for the conduct of hearings, the procedural matters preliminary thereto, and the preservation of hearing records.

(a) Consumer assistance. Code compliance officers, currently located in offices of the insurance commissioner in Olympia, Seattle, Spokane, Tacoma and Yakima, handle written and oral inquiries and complaints from policyholders and claimants. Assistance is rendered by the commissioner pursuant to authority to enforce the various provisions of the insurance code, including RCW 48.02.060, 48.02.080, and 48.02.160, and based on authority to take disciplinary action against an insurance company and other licensees. While the consumer protection division provides assistance to members of the public and tries to resolve complaints concerning insurers and licensees, some matters will involve disputed facts or laws and will have to be resolved in court or arbitration proceedings. The commissioner is not a substitute for the courts.

(b) Regulations and statutes. The consumer protection division evaluates existing statutes and rules, proposes additional legislation, drafts new insurance regulations, and assists in the enforcement of laws and regulations.

(c) Special programs. To help senior consumers find their way through the sometimes confusing maze of state, federal, and private insurance options available to citizens over age sixty, the insurance commissioner sponsors the senior health insurance benefit advisors (SHIBA) program. SHIBA volunteers throughout the state act as unpaid advisors to other seniors in the community, answer basic health insurance questions, and refer people to the proper governmental agency to find solutions to their insurance problems. In order to assure the objectivity of advice given by SHIBA volunteers, the commissioner has determined that no one connected to

the SHIBA program may be an active agent of an insurer selling disability insurance policies or contracts in this state.

(d) Investigation and enforcement. Members of the consumer protection division investigate activities of licensees and companies to determine whether corrective action or disciplinary proceedings are needed, and institute proceedings leading to fines, license revocations or suspensions, as appropriate.

(4) Legal assistance from the attorney general. Assistant attorneys general are assigned as needed to the insurance commissioner's office to render legal advice, to represent the commissioner in disciplinary hearings and court cases, and to assist in the drafting of legislation and regulations.

(5) Insurance advisory examining board. An insurance advisory examining board, made up of seven Washington insurance agents or brokers who have been licensed in this state for at least five years, has the power to recommend general policy concerning the scope, content, procedure, and conduct of examinations to be given for licenses as insurance agents, brokers, or solicitors (RCW 48.17.135).

WSR 90-17-059

PROPOSED RULES

INSURANCE COMMISSIONER

[Filed August 14, 1990, 2:04 p.m.]

Original Notice.

Title of Rule: Unfair practices applicable to title insurers and their agents.

Purpose: To amend WAC 284-30-800 to permit gifts from title insurance companies and their agents to producers of title business not in excess of \$25 per year.

Other Identifying Information: Insurance Commissioner Matter No. R 90-11.

Statutory Authority for Adoption: RCW 48.02.060 (3)(a), 48.30.140 and 48.30.150.

Statute Being Implemented: RCW 48.01.030 and 48.30.010(2).

Summary: The current regulation limits gifts and inducements from title insurance companies and their agents to producers of title business to \$12 per year. The purpose of this proposed amendment is to raise that amount to \$25 per year.

Reasons Supporting Proposal: The primary reasons for this proposed amendment are to reflect increased costs of even modest meals and other gifts and to bring the amount of said gift to the same amount as that which is permitted to be given to insureds or prospective insureds under RCW 48.30.150.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Patricia D. Petersen, Insurance Building, Olympia, Washington, (206) 586-5591.

Name of Proponent: Dick Marquardt, Insurance Commissioner, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: The current regulation limits gifts and inducements from title insurance companies and their agents to producers of title business to \$12 per year. The purpose of this proposed amendment is to raise that amount to \$25 per year. The anticipated effect of this proposed amendment will be to allow meals and other items of value to be given to producers of title business which are not unduly restricted.

Proposal Changes the Following Existing Rules: The current regulation limits gifts and other inducements from title insurance companies and their agents to producers of title business to \$12 per year. The purpose of this proposed amendment is to raise that amount to \$25 per year.

Small Business Economic Impact Statement: This proposed amendment to WAC 284-30-800 will impact all title insurance companies and their agents, large and small. The giving of gifts and other inducements for title business to producers of title business is purely voluntary. This proposed amendment only changes the value of what may be given from \$12 to \$25 per year. The impact of the rule will be in the complete control of each title insurer and its agents.

Hearing Location: Office of Insurance Commissioner, Insurance Building, Olympia, Washington, on September 26, 1990, at 10:00 a.m.

Submit Written Comments to: Insurance Commissioner, Insurance Building, AQ-21, Olympia, Washington 98504-0321, by August 26, 1990.

Date of Intended Adoption: October 2, 1990.

August 3, 1990

Dick Marquardt

Insurance Commissioner

By Patricia D. Petersen

Deputy Insurance Commissioner

AMENDATORY SECTION (Amending Order R 88-6, filed 5/17/88)

WAC 284-30-800 UNFAIR PRACTICES APPLICABLE TO TITLE INSURERS AND THEIR AGENTS. (1) RCW 48.30.140 and 48.30.150, pertaining to "rebating" and "illegal inducements," are applicable to title insurers and their agents. Because those statutes primarily affect inducements or gifts to an insured and an insured's employee or representative, they do not directly prevent similar conduct with respect to others who have considerable control or influence over the selection of the title insurer to be used in real estate transactions. As a result, insureds do not always have free choice or unbiased recommendations as to the title insurer selected. To prevent unfair methods of competition and unfair or deceptive acts or practices, this rule is adopted.

(2) It is an unfair method of competition and an unfair and deceptive act or practice for a title insurer or its agent, directly or indirectly, to offer, promise, allow, give, set off, or pay anything of value exceeding ((twelve)) twenty-five dollars, calculated in the aggregate over a twelve-month period on a per person basis in the manner specified in RCW 48.30.140(4), to any person as an inducement, payment, or reward for placing or causing title insurance business to be given to the title insurer.

(3) Subsection (2) of this section specifically applies to and prohibits inducements, payments, and rewards to real estate agents and brokers, lawyers, mortgagees, mortgage loan brokers, financial institutions, escrow agents, persons who lend money for the purchase of real estate or interests therein, building contractors, real estate developers and subdividers, and any other person who is or may be in a position to influence the selection of a title insurer, except advertising agencies, broadcasters, or publishers, and their agents and distributors, and bona fide

employees and agents of title insurers, for routine advertising or other legitimate services.

(4) This section does not affect the relationship of a title insurer and its agent with insureds, prospective insureds, their employees or others acting on their behalf. That relationship continues to be subject to the limitations and restrictions set forth in the rebating and illegal inducement statutes, RCW 48.30.140 and 48.30.150(~~which continue to limit gifts, payments and other inducements to a five dollar maximum, per person, per year~~)).

WSR 90-17-060

PERMANENT RULES

CENTRALIA COLLEGE

[Order A-4 (90)—Filed August 14, 1990, 2:09 p.m.]

Date of Adoption: August 9, 1990.

Purpose: Repeal outdated parking and traffic regulations which do not apply to Centralia College.

Citation of Existing Rules Affected by this Order: Repealing chapter 132L-30 WAC.

Statutory Authority for Adoption: RCW 28B.50.140(10).

Pursuant to notice filed as WSR 90-14-111 on July 5, 1990.

Effective Date of Rule: Thirty-one days after filing.

August 10, 1990

Jack R. Kalmbach

Dean of Administration

Chapter 132L-117 WAC

Parking and Traffic Regulations—Centralia College

WAC

- | | |
|--------------|---|
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5 PM Monday October 1 to 9 AM Tuesday October 2. This opening excludes those waters of area 10 east of a line projected from Alki Pt. to the light at Fourmile Rock.

* Areas 12, 12A and 12B - Purse Seines using the 5-inch strip may fish from 5 AM to 9 PM daily, Tuesday, Wednesday and Thursday October 2, 3 and 4 and Gill-nets using 5-inch minimum mesh may fish from 5 PM to 9 AM nightly, Monday, Tuesday and Wednesday nights October 1, 2 and 3.

* Areas 4B, 5, 6, 6A, 6B, 6C, 7C, 7D, 7E, 8, 9, 9A, 10A, 10C, 10D, 10E, 10F, 10G, 11A, 12C, 12D, 13, 13A, 13C, 13D, 13E, 13F, 13G, 13H, 13I, 13J, and 13K, all freshwater areas, and exclusion zones provided for in WAC 220-47-307 except as modified herein - Closed.

REPEALER

The following section of the Washington Administrative Code is repealed effective immediately:

WAC 220-47-609 PUGET SOUND ALL-CITIZEN COMMERCIAL SALMON FISHERY (90-112)

WSR 90-20-104
PERMANENT RULES
OFFICE OF
INSURANCE COMMISSIONER

[Order R 90-11—Filed October 2, 1990, 2:08 p.m.]

Date of Adoption: October 2, 1990.

Purpose: To amend WAC 284-30-800 to permit gifts from title insurance companies and their agents to producers of title business not in excess of \$25 per year.

Citation of Existing Rules Affected by this Order: Amending WAC 284-30-800.

Statutory Authority for Adoption: RCW 48.02.060 (3)(a), 48.30.140, 48.30.150, 48.01.030 and 48.30.010(2).

Pursuant to notice filed as WSR 90-17-059 on August 14, 1990.

Effective Date of Rule: Thirty-one days after filing.

October 2, 1990
Dick Marquardt
Insurance Commissioner
by Patricia D. Petersen
Deputy Insurance Commissioner

AMENDATORY SECTION (Amending Order R 88-6, filed 5/17/88)

WAC 284-30-800 UNFAIR PRACTICES APPLICABLE TO TITLE INSURERS AND THEIR AGENTS. (1) RCW 48.30.140 and 48.30.150, pertaining to "rebating" and "illegal inducements," are applicable to title insurers and their agents. Because those statutes primarily affect inducements or gifts to an insured and an insured's employee or representative, they

do not directly prevent similar conduct with respect to others who have considerable control or influence over the selection of the title insurer to be used in real estate transactions. As a result, insureds do not always have free choice or unbiased recommendations as to the title insurer selected. To prevent unfair methods of competition and unfair or deceptive acts or practices, this rule is adopted.

(2) It is an unfair method of competition and an unfair and deceptive act or practice for a title insurer or its agent, directly or indirectly, to offer, promise, allow, give, set off, or pay anything of value exceeding ~~((twelve))~~ twenty-five dollars, calculated in the aggregate over a twelve-month period on a per person basis in the manner specified in RCW 48.30.140(4), to any person as an inducement, payment, or reward for placing or causing title insurance business to be given to the title insurer.

(3) Subsection (2) of this section specifically applies to and prohibits inducements, payments, and rewards to real estate agents and brokers, lawyers, mortgagees, mortgage loan brokers, financial institutions, escrow agents, persons who lend money for the purchase of real estate or interests therein, building contractors, real estate developers and subdividers, and any other person who is or may be in a position to influence the selection of a title insurer, except advertising agencies, broadcasters, or publishers, and their agents and distributors, and bona fide employees and agents of title insurers, for routine advertising or other legitimate services.

(4) This section does not affect the relationship of a title insurer and its agent with insureds, prospective insureds, their employees or others acting on their behalf. That relationship continues to be subject to the limitations and restrictions set forth in the rebating and illegal inducement statutes, RCW 48.30.140 and 48.30.150(~~(which continue to limit gifts, payments and other inducements to a five-dollar maximum, per person, per year))~~).

WSR 90-20-105
NOTICE OF PUBLIC MEETINGS
DEPARTMENT OF
NATURAL RESOURCES
(Forest Fire Advisory Board)
[Memorandum—October 1, 1990]

The next scheduled meeting of the Forest Fire Advisory board is Thursday, November 8, 1990. The meeting will begin at 9:00 a.m. and will be held in Fire Control's conference room, located in Building 5 of the Rowsix Complex in Lacey.

Topics for discussion include status of fund, interagency teams, status of fire protection district assistance committee and fire season. Please let us know of any other topics you would like to have included on the agenda.

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March 4, 2009

OLYMPIA, WASHINGTON

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ATTORNEY GENERAL'S OFFICE

(Subject/Agency index at back of issue)
This issue contains documents officially
filed not later than February 18, 2009

(3) PPE required by this standard is to be provided at no cost to the employees.

AMENDATORY SECTION (Amending WSR 05-01-173, filed 12/21/04, effective 5/1/05)

WAC 296-848-40040 Personal protective equipment (PPE).

You must:

- Provide at no cost to employees, make sure employees use, and maintain PPE as follows:
 - Provide clean and dry protective clothing to employees who could experience eye or skin irritation from exposure to inorganic arsenic or who work in exposure control areas.
 - Provide impervious protective clothing to employees exposed to arsenic trichloride.

Note:

- Arsenic trichloride is corrosive and can be rapidly absorbed through skin.
- Examples of protective clothing appropriate for inorganic arsenic exposures include:
 - Coveralls or similar full-body work clothing.
 - Gloves, and shoes or coverlets.
 - Face shields or vented goggles when necessary to prevent eye irritation.

You must:

- Make sure employees do not remove inorganic arsenic from PPE by blowing or shaking.
 - Make sure protective clothing is removed:
 - In change rooms;
- AND**
- At the end of the work shift.
 - Make sure contaminated protective clothing that will be cleaned, laundered, or disposed of, is placed in a closed container located in the change room.
 - Make sure the container prevents the release of inorganic arsenic.
 - Launder protective clothing:
 - At least weekly if employees work in areas where exposure monitoring results of inorganic arsenic are below an eight-hour time-weighted average concentration of 100 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$);

OR

- Daily if employees work in areas where either exposure monitoring results of inorganic arsenic are above an eight-hour time-weighted average concentration of 100 $\mu\text{g}/\text{m}^3$ or when more frequent washing is needed to prevent skin irritation.
 - Maintain the effectiveness of PPE by repairing or replacing it, as needed:
 - Dispose of protective clothing if it will not be repaired.
 - Inform individuals who clean or launder protective clothing about the possible health effects associated with inorganic arsenic, including carcinogenic effects, by doing the following:
 - Provide the information in writing;
- AND**
- Label containers of contaminated PPE with the following warning:

CAUTION:

Clothing contaminated with inorganic arsenic
Do not remove dust by blowing or shaking
Dispose of inorganic arsenic contaminated
wash water as applicable local, state, or federal
regulations require

Reference: To see additional Personal protective equipment requirements go to the Safety and health core rules, chapter 296-800 WAC, and find the section titled, PPE, WAC 296-800-160.

WSR 09-05-077

PERMANENT RULES

OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2008-21—Filed February 17, 2009, 9:59 a.m., effective March 20, 2009]

Effective Date of Rule: Thirty-one days after filing.

Purpose: These new rules define the things of value that a title company is permitted to give to any person in a position to refer or influence the referral of title insurance business, as required by RCW 48.29.005(5).

Citation of Existing Rules Affected by this Order: Repealing WAC 284-30-800.

Statutory Authority for Adoption: RCW 48.02.060, 48.29.005.

Other Authority: RCW 48.29.210.

Adopted under notice filed as WSR 08-24-106 on December 3, 2008.

Changes Other than Editing from Proposed to Adopted Version: A new subsection was added to WAC 284-29-005 defining commercial property.

In the third line of WAC 284-29-230 [(1)(c)] "in a single day" was amended to "during a single event."

WAC 284-29-260(10) was amended to distinguish between the time limits for commercial property as to the presumption of when a title commitment has cancelled.

A final cost-benefit analysis is available by contacting Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7041, fax (360) 586-3109, e-mail kacys@oic.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; **Federal Rules or Standards:** New 0, Amended 0, Repealed 0; or **Recently Enacted State Statutes:** New 14, Amended 0, Repealed 1.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 14, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; **Pilot Rule Mak-**

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 14, Amended 0, Repealed 1.

Date Adopted: February 17, 2009.

Mike Kreidler
Insurance Commissioner

Chapter 284-29 WAC

TITLE INSURANCE

NEW SECTION

WAC 284-29-200 Scope and purpose. (1) RCW 48.29.210(2) states: "A title insurer, title insurance agent, or employee, agent, or other representative of a title insurer or title insurance agent shall not, directly or indirectly, give anything of value to any person in a position to refer or influence the referral of title insurance business to either the title insurance company or title insurance agent, or both, except as permitted under rules adopted by the commissioner." WAC 284-29-200 through 284-29-265 establishes standards for acceptable giving of things of value by a title company to any person in a position to refer or influence the referral of title insurance business to the title company. If the thing of value is not clearly and specifically included in WAC 284-29-200 through 284-29-265 as a thing of value that a title company may give to a person, its giving is prohibited.

(2) RCW 48.29.210 not only applies to title insurance producers or associates of producers, but to every person in position, directly or indirectly, to refer or influence the referral of title insurance business.

(3) No title company is required to give to any person any of the things of value that are permitted by WAC 284-29-200 through 284-29-265 and a person is not entitled to receive any of the permitted things of value from a title company.

(4) Adoption of WAC 284-29-200 through 284-29-265 must not be construed to mean that the commissioner encourages title companies to give anything of value to any person in a position to refer or influence the referral of title insurance business.

(5) Nothing contained in WAC 284-29-200 through 284-29-265 prohibits the payment by a title insurer or title insurance agent to a producer of a return on ownership interest in the title insurer or title insurance agent as set forth in RCW 48.29.213.

(6) Title companies must not enter into any agreement, arrangement, scheme, or understanding or in any other manner pursue any course of conduct, designed to avoid RCW 48.29.210 and WAC 284-29-200 through 284-29-265.

NEW SECTION

WAC 284-29-205 Definitions. For purposes of WAC 284-29-200 through 284-29-265:

(1) "Advertising" or "advertisement" means a representation about any product, service, equipment, facility, or activity or any person who makes, distributes, sells, rents, leases, or otherwise makes available such a product, service, equipment, facility, or activity, when the representation:

(a) Is communicated to a person that, to any extent, by content or context, informs the recipient about such product, service, equipment, facility, or activity;

(b) Recognizes, honors, or otherwise promotes such a product, service, equipment, facility, or activity; or

(c) Invites, advises, recommends, or otherwise solicits a person to participate in, inquire about, purchase, lease, rent, or use such a product, service, equipment, facility, or activity.

(2) "Associates of producers" has the same meaning as set forth in RCW 48.29.010 (3)(f).

(3) "Bona fide employee of a title company" means an individual who devotes substantially all of his or her time to performing services on behalf of a title company and whose compensation for these services is in the form of salary or its equivalent by the title company.

(4) "Commercial real estate" means a fee title interest or possessory estate in real property located in this state, except an interest in real property which is:

(a) Improved with one-single family residential unit or multifamily structure with four or less residential units;

(b) Unimproved and the maximum permitted development is one to four residential units or structures under the county or city zoning ordinances or comprehensive plan applicable to that real estate;

(c) Classified as farm and agricultural land or timber land for assessment purposes under chapter 84.34 RCW; or

(d) Improved with single-family residential units such as condominiums, townhouses, timeshares, or stand-alone houses in a subdivision that may be legally sold, leased, or otherwise disposed of on a unit-by-unit basis.

(5) "Give" means to transfer to another person, or cause another person to receive, retain, use or otherwise benefit from a thing of value whether or not the title company receives compensation in return. It also means the transfer to a third person of anything of value that in any manner benefits a person in a position to refer or influence the referral of title insurance business.

(6) "Market rate" means the price at which a seller, under no obligation or duress to sell, is willing to accept and a buyer, under no obligation or duress to buy, is willing to pay in an arms-length transaction. The market rate is determined by comparing the items or services purchased or sold to similar items or services that have been recently purchased by others or sold to others, including others not in the title insurance business.

(7) "Person" has the meaning set forth in RCW 48.01-070.

(8) "Producers of title insurance business" or "producer" has the meaning set forth in RCW 48.29.010 (3)(e); this term includes associates of producers and any person in a position to refer or influence the referral of title business to the title company.

(9) "Representative of a title company" means any person acting directly or indirectly on behalf of the title company.

(10) "Restrictive covenants" means private agreements that restrict the use or occupancy of real property generally by specifying lot sizes, building lines, occupancy, architectural styles, and the use to which the property may be put.

Restrictive covenants do not include matters such as easements and road maintenance agreements.

(11) "Self-promotional" means an advertisement or promotional function which is conducted by a single title company solely for the benefit of the title company or a promotional item intended for distribution by a single title company and only on behalf of the title company.

(12) "Thing of value" means anything that has a monetary value. It includes but is not limited to cash or its equivalent, tangible objects, services, use of facilities, monetary advances, extensions of lines of credit, creation of compensating balances, title company employee time, advertisements, discounts, salaries, commissions, services at special prices or rates, sales or rentals at special prices or rates, and any other form of consideration, reward or compensation.

(13) "Title company" means either a title insurance company authorized to conduct title insurance business in this state under chapter 48.05 RCW or a title insurance agent defined in RCW 48.17.010(15), or both. The term includes employees, representatives, and agents of title insurance companies and title insurance agents.

(14) "Trade association" means an association of persons, a majority of whom are producers or persons whose primary activity involves real property. Trade association does not include an association of persons, a majority of whom are title insurance companies and title insurance agents.

NEW SECTION

WAC 284-29-210 Real property information. (1) A title company may give to a producer without charge information about a specific parcel of real property located in any county, commonly referred to as a "listing package," which consists of information relating to the ownership and status of title to real property. The listing package must be limited to a single copy of one or more of the following six items of information:

- (a) The last deed appearing of record;
- (b) Deeds of trust, mortgages, and real estate contracts which appear to be in full force and effect;
- (c) A map of the property which may show the property's location or dimensions, or both;
- (d) Applicable restrictive covenants;
- (e) Tax information; and
- (f) Property characteristics such as number of rooms, square footage and year built.

(2) A listing package must not include any other real property information such as market value information, demographics, or additions, addenda, or attachments which may be construed as conclusions reached by the title company regarding matters of marketable ownership or encumbrances.

(3) A generic cover letter printed on the standard letterhead of the title company may be attached to the listing package.

(a) The cover letter may include a brief statement identifying by name only, any of the six permitted items included in subsection (1) of this section that may be attached to the cover letter;

(b) The cover letter may contain a disclaimer as to conclusions of marketable ownership or encumbrances; and

(c) The content of the cover letter or listing package is strictly limited to the items listed in this section and must not include any advertising or marketing for the benefit of the recipient.

(4) A title company may give, without charge, to a producer a single copy of a document affecting title to a specific parcel of real property only if:

(a) The cost to the title company of giving the copy of the document, including but not limited to labor and materials, is ten dollars or less; and

(b) The document is not in any manner given to the producer in conjunction with or in association with the giving of other documents related to property in the general locale for which the single document is being given.

(5) A title company must not give a producer reports containing publicly recorded information, comparable sale information, appraisals, estimates, or income production potential, information kits or similar packages containing information about one or more parcels of real property, except as permitted by this section, without charging and actually receiving payment for the actual cost of the work performed and the material provided (for example, costs related to providing farm packages, labels, lot book reports, home books, and tax information).

(6) A title company may give, at no charge, to the proposed insured or insured, copies of any documents set forth as exceptions in a commitment or policy.

(7) If a title company owns or leases and maintains a complete set of tract indexes in a particular county in which the county government does not make copies of recorded documents available on the county's web site, then the title company may make copies of the recorded documents available at no charge to the general public on the title company's web site.

NEW SECTION

WAC 284-29-215 Advertising. (1) A title company may advertise in a trade association publication only if all of the following conditions are met:

(a) The publication is an official publication of the trade association;

(b) The publication must be nonexclusive so that any title company has an equal opportunity to advertise in the publication;

(c) The title company must pay no more than the standard rate for the advertisement applicable to members of the trade association;

(d) The title company's advertisement must be solely self-promotional; and

(e) The payment for the advertisement must be included as an expenditure for the purposes of the limits in WAC 284-29-220(5).

(2) Except as provided in subsection (1) of this section, a title company must not directly, indirectly, by payment to a third-party or otherwise, use any means of communication or media to advertise on behalf of, for, or with a producer, including but not limited to:

(a) Advertising real property for sale or lease unless the property is owned by the title company;

(b) Advertising or promoting the listings of real property for sale by real estate licensees; or

(c) Advertising in connection with the promotion, sale, or encumbrance of real property.

(3) No advertisement may be placed in a publication that is published or distributed by or on behalf of a producer of title business, including but not limited to, web sites, flyers, postcards, for sale signs, flyer boxes, or any other means of communication or any other media.

(4) Title companies may pay for a self-promotional advertisement in the publications or broadcasts of the following persons:

(a) Newspapers;

(b) Telephone directories;

(c) Internet web sites, subject to the limits of subsection (3) of this section;

(d) Television stations;

(e) Radio stations; and

(f) Real estate licensees who do not represent buyers and sellers or who do not function as agents as defined in RCW 18.86.010(2) provided that the publication must be nonexclusive so that any title company has an equal opportunity to advertise in the publication.

NEW SECTION

WAC 284-29-220 Trade associations. (1) A title company may donate the time of its employees to serve on a trade association committee.

(2) A title company may donate to, contribute to or otherwise sponsor a trade association event only if all of the following conditions are met:

(a) The event is a recognized association event that generally benefits all members and affiliated members of the association in an equal manner;

(b) The donation must not benefit a selected producer member of the association unless through a random process; and

(c) Solicitation for the donation must be made of all association members and affiliated members in an equal manner and amount.

(3) A title company may pay for its employees and a single guest of each employee to attend trade association events only if all of the following conditions are met:

(a) The title company pays a fee equal to fees paid by producer members of the association in the events;

(b) The title company employees and their guest(s) actually attend the event (except when attendance is prevented by an emergency); and

(c) The guest of the title company employee is not a producer (except where the guest is related to the title company employee by blood or marriage or their domestic partner).

(4) For purposes of this section, trade association events include, but are not limited to, conventions, award banquets, symposiums, educational seminars, breakfasts, lunches, dinners, receptions, cocktail parties, open houses, sporting activities and other similar activities.

(5) A title company may:

(a)(i) Donate to, contribute to, or otherwise sponsor a trade association event under subsection (2) of this section;

(ii) Advertise in a trade association publication under WAC 284-29-215(1); and

(iii) Sponsor a trade association educational seminar under WAC 284-29-235(3);

(b) Give a thing of value listed under (a) of this subsection to a trade association only if all of the following requirements are met:

(i) The thing of value is limited to one thousand dollars per event, advertisement, or sponsorship of an educational seminar;

(ii) The title company must not give a thing of value to all trade associations more than three times in a calendar year;

(iii) The title company must not combine any of these permitted expenditures into one expenditure; and

(iv) The title company must not accumulate or carry forward left over or unused expenditures from one of these permitted expenditures to a subsequent expenditure.

(6) If a title company owns or leases and maintains a complete set of tract indexes in more than one county:

(a) The limits set forth in subsection (5) of this section apply on a county by county basis for donations, contributions, sponsorships, payments for events, advertisements, or sponsorship of educational seminars of trade associations a majority of whose members are located in that county;

(b) A donation, contribution, sponsorship, payment for an event, advertisement, or sponsorship of an educational seminar to a statewide trade association shall constitute one of its expenditures for each and every county in which the title company is authorized to issue title insurance policies; and

(c) The title company must not combine or accumulate unused expenditures of these permitted expenditures from one county to another county nor to a statewide trade association.

(7) If a title company that is under common ownership makes a donation, contribution, sponsorship, payment for an event, advertisement, or sponsorship of an educational seminar to a statewide trade association, the expenditure shall constitute an expenditure as one of the expenditures for each and every one of the title companies that are under common control.

NEW SECTION

WAC 284-29-225 Self-promotional items. A title company may give a thing of value with its preprinted company logo, except money or gift cards, to a producer if the cost to the title company is five dollars or less per thing of value and only if the thing of value does not contain the name or logo of the producer or any reference to the producer.

NEW SECTION

WAC 284-29-230 Permitted business entertainment. (1) A title company may make expenditures for business meals on behalf of any individual, only if the expenditure meets all the following criteria:

(a) An individual representing the title company is present during the business meal;

(b) There is a substantial and substantive title insurance business discussion directly before, during or after the business meal;

(c) No more than four individuals that are employed by or are independent contractors of the same producer are provided a business meal during a single event (spouses and guests of the producer must be included in the count for purposes of determining the four-person maximum); and

(d) The title company does not expend more than one hundred dollars per individual throughout any calendar year for all business meals.

(2) The business meals permitted in subsection (1) of this section must not include open houses of producers wherever located, including but not limited to, at the producers premises or facilities or homes of property for sale.

(3) For purposes of this section, "meals" includes, but is not limited to, breakfast, brunch, lunch, dinner, receptions, or cocktails and other beverages, whether the meals occur on or off the title company's premises.

(4) For purposes of determining the maximum permitted expenditure under subsection (1) of this section, all of the following requirements must be met:

(a) All costs associated with a meal must be included in the calculation of expenses. When calculating the cost of a meal, the title company must include all costs paid by the title company for travel, transportation, hotel, equipment or facility rental, food, cocktails and other beverages, refreshments, and registration or entry fees, except those fees incurred solely by the title company and that do not benefit the producer.

(b) Attendance at or an invitation to a meal must not be based on or be given as compensation for forwarding or directing title business to the title company.

(c) For accounting purposes, the expenditures by a title company for a meal may be prorated among all attendees, including the title company employees.

(5) A title company may host no more than two self-promotional functions per year, only if all of the following requirements are met:

(a) Any self-promotional function must be at the title company's owned or occupied facility at which the title company conducts its regular business. The self-promotional function must be nonexclusive and open to all producers.

(b) A title company must not spend more than fifteen dollars per guest reasonably expected to attend at any one self-promotional function.

(c) A title company must not combine permitted expenditures for two self-promotional functions into a single self-promotional function.

(d) A title company must not accumulate or carry forward left over or unused expenditures from one self-promotional function to a subsequent self-promotional function.

(e) If a title company owns or leases and maintains a complete set of tract indexes in more than one county, then the limits set forth in this subsection apply on a county by county basis.

(i) The self-promotional functions must be at the title company's owned or occupied facility at which the title com-

pany conducts its regular business in the county for which it owns or leases and maintains a complete set of tract indexes.

(ii) The title company must not combine permitted expenditures for a self-promotional function from one county to another county.

(6) The limits contained in subsections (1) and (5) of this section are separate limits and an expenditure made for an activity under one of these subsections is not applied to the limit under the other subsection.

NEW SECTION

WAC 284-29-235 Educational seminars. (1) A title company may conduct educational programs at no charge only if the content of the program consists solely of education regarding title insurance, title to real property, and escrow topics.

(a) A title company must spend no more than ten dollars per person for refreshments at any one educational program.

(b) Any materials that the title company provides to attendees must be directly related to the topic of the seminar or are self-promotional advertising of the title company.

(2) A title company may provide a speaker at no charge for an educational program conducted or presented by other persons, only if the following conditions are met:

(a) The speaker is an employee of the title company;

(b) If a title insurance agent is providing the speaker, the speaker may be an employee of the title insurer for whom the title insurance agent has been properly appointed;

(c) The topic of the presentation by the employee is solely related to title insurance, escrow, or real property law; and

(d) Any materials that the speaker provides to attendees are directly related to the topic of the speaker or are self-promotional advertising of the title company of the employee.

(3) A title company may sponsor an educational seminar of a trade association subject to the limits in WAC 284-29-220.

(4) A title company may sponsor an educational program on topics other than title insurance, title to real property, and escrow only if:

(a) The educational program is open to all producers; and

(b) The attendees actually pay to attend the program the greater of:

(i) All expenses and costs associated with the delivery of the educational program by the title company; or

(ii) What the attendee would pay to attend a similar seminar sponsored by entities other than title companies on the open market.

The calculation by the title company of the expenses and costs associated with the delivery of the education program must include, but not be limited to, all travel, refreshments, speaker fees or wages of the speaker, facility rental, preparation of materials distributed at the program, parking, advertisement, and wages of arranging and planning for the program.

NEW SECTION

WAC 284-29-240 Political action committees. Title companies and their employees may donate to registered political action committees.

NEW SECTION

WAC 284-29-245 Locale of title company employees. A title company and its employees must not lease or rent a workspace location owned or leased by a producer unless all of the following conditions are met:

- (1) The space is secured by a bona fide written lease or rental agreement;
- (2) The rent paid for the workspace is consistent with the prevailing rent charged for similar space in the market area of the workspace;
- (3) Renting the space is not contingent upon the volume of title company business and is paid only in cash and not by trade or barter;
- (4) There is no sharing of employees unless the title company only pays for its reasonably proportionate share;
- (5) There is no common usage of equipment between the title company and the producer unless the title company only pays for its proportionate share; and
- (6) The workspace is occupied by a bona fide employee of the title company a minimum thirty hours per week, except for holidays and bona fide emergencies, and is open to the public during regular business hours. However, if for appropriate business reasons the title company ceases conducting business at the locale and there is a remaining term on the lease or rental agreement, the title company may continue to pay the rent until the expiration of the lease or rental agreement or the next renewal date of the lease or rental agreement, whichever is earlier.

NEW SECTION

WAC 284-29-250 Memorial gifts and charitable contributions—Limitations. (1) A title company may provide no more than two hundred dollars in value of food, floral bouquets, or memorial donations for the death of a producer or a producer's immediate family member. This includes contributions to medical funds for a producer or a producer's seriously injured or seriously ill immediate family member.

- (2) A title company may contribute to a charity only if:
 - (a) The contribution by the title company is made payable directly to the charity; and
 - (b) The solicitation for the contribution and the contribution are not, directly or indirectly, in exchange for the referral of title insurance business.
- (3) Title company employees may attend and volunteer their time at events hosted by charities.

NEW SECTION

WAC 284-29-255 Other things of value that title companies are permitted to give to producers. (1) A title company must not give, offer to give, provide, or offer to provide nontitle services (for example: Computerized book-keeping, forms management, computer programming, trust

accounting for trust accounts not held in the name of the title company, short sale consultants, or transaction coordination) or any similar benefit to a producer, without charging and actually receiving a fee equal to the value of the services provided and in an amount at not less than what the producer would pay if the services were purchased on the open market or the title company's cost to provide the service, whichever is greater.

(2) A title company must not allow the use of any part of its premises (for example, its conference rooms or meeting rooms) to a producer without receiving a fair rental charge equal to the average rental for similar premises in the area.

(3) A title company may allow the use of a part of its premises (for example, its conference rooms or meeting rooms) for no charge to a meeting of a trade association for no more than four meetings in a calendar year.

(4) Title company employees may attend activities and business meetings of producers if all of the following standards are met:

(a) There is no cost to the employee or title company other than the employee's own entry fees, registration fees, meals, or other costs associated with the activity or business meeting;

(b) The fees paid by the title company are no greater than those charged to producer attendees; and

(c) If the title company pays a fee for an employee to attend the activity or business meeting, the title company employee must actually attend the activity or business meeting, unless an emergency prevents attendance.

(5) A title company may advance the recording fees for transactions for which the title company is either issuing the title insurance or conducting the escrow, or both, provided the title company is promptly reimbursed for the recording fees that it advanced.

NEW SECTION

WAC 284-29-260 Examples of prohibited matters. The following is a partial, nonexclusive list of things of value that a title company must not give to a producer. Even though a thing of value is not included on this list a title company must not give any other things of value to a producer unless clearly and specifically permitted by WAC 284-29-200 through 284-29-255.

(1) Except as permitted in WAC 284-29-200 through 284-29-255:

(a) A title company must not cosponsor, subsidize, or contribute fees, prizes, gifts, or give things of value for a promotional function or activity off the title company's premises whether the function is self-promotional or not.

(b) Examples of off-premises functions or activities include, but are not limited to:

- (i) Meetings;
- (ii) Meals, including breakfasts, luncheons, dinners or cocktail parties;

(iii) Conventions, installation ceremonies, celebrations, hospitality rooms or similar functions;

(iv) Outings such as boat trips, fishing trips, motor vehicle rallies, sporting events of any kind, gambling trips, hunt-

ing trips, ski trips, shopping trips, golf tournaments, trips to or events at recreational or entertainment areas;

(v) Open house celebrations, or open houses at homes or property for sale;

(vi) Dances; or

(vii) Artistic performances.

(2) A title company must not sponsor, subsidize, supply prizes or labor, or otherwise give things of value for promotional activities of producers.

(3) A title company must not give or offer to give, either directly or indirectly, a compensating balance or deposit in a lending institution for the express or implied purpose of influencing the extension of credit by the lending institution to any producer.

(4) A title company must not disburse or offer to disburse on behalf of any person escrow funds held by the title company before the conditions of the escrow applicable to the disbursements are met.

(5) A title company must not advance, pay or offer to advance or pay money on behalf of any person into escrow to facilitate a closing unless:

(a) The property that is the subject of the escrow is owned by or being purchased by the title company;

(b) The payment is made in compliance with a court order requiring the title company to make the payment; or

(c) In settlement of a bona fide dispute for which the title company may be liable.

(6) A title company must not give, pay or offer to pay, either directly or indirectly, or make payment to a third party for the benefit of any producer for:

(a) The services of a title company employee or representative or an outside professional whose services are required by any producer to complete or structure a particular transaction;

(b) The salary or any part of compensation of an employee of a producer;

(c) The salary or any part of the salary, commission, or any other form of compensation to any employee of the title company who is at the same time actively engaged as a producer;

(d) A fee for making an inspection or appraisal of property, whether or not the fee bears a reasonable relationship to the services performed;

(e) Services required to be performed by any producer in his or her professional capacity;

(f) Any evidence of title or copy of the contents of a document which is not produced or issued by the title company;

(g) The rent for all or any part of any space occupied by any producer, except as provided in WAC 284-29-245;

(h) Money, prizes, or other things of value in any kind of a contest or promotional activity;

(i) Any advertisement published in the name of, for, or on behalf of any producer;

(j) A business form of any producer which is provided for the convenience and benefit of the producer, except a form regularly used in the conduct of the title company's business;

(k) Any earnest money purchase agreements or purchase and sale agreements;

(l) Flyer boxes and stands, for sale signs and posts, or services for the placement of any of them;

(m) Postcards, stamps, flyers, newsletters, folders, invitations, copying, cutting or services related to preparing any of these items;

(n) Car washes or coupons for car washes;

(o) Pictures of producers;

(p) Gift cards of in any amount;

(q) Messages;

(r) Discount certificates; or

(s) The cost of or reimbursement for advisory fees.

(7) A title company must not provide, or offer to provide, all or any part of the time or productive effort of any employee of the title company to any producer. For example, title company employees must not be used by or loaned out to a producer for the self-promotional interests of the producer except as part of the title company's day-to-day business with producers.

(8) A title company must not give or offer to give, pay for, or offer to pay for, furniture; office supplies, including but not limited to, file folders, telephones, computers or other equipment; or automobiles to any producer. A title company must not pay for, or offer to pay for, any portion of the cost of renting, leasing, operating, or maintaining any of these items.

(9) Delivery services between a title company and a producer must be performed by the title company's messenger service or employees and must consist only of delivering items directly related to the title company's title insurance or escrow business from the title company to a producer or from a producer to the title company.

(10) In accordance with its title insurance rates filed with the commissioner, a title company must not provide a title insurance commitment without actually receiving payment for the cancellation fee:

(a) For commitments on noncommercial property, within the earlier of the following:

(i) One hundred eighty days of the first issuance of the commitment; or

(ii) Sixty days of:

(A) The cancellation of the commitment;

(B) When the title company reasonably should know that the commitment has been canceled; or

(C) When the title company reasonably should know that the transaction for which the commitment was issued has been insured by another title company.

(b) For commitments on commercial property, within sixty days of the earlier of the following:

(i) The cancellation of the commitment;

(ii) When the title company reasonably should know that the commitment has been canceled; or

(iii) When the title company reasonably should know that the transaction for which the commitment was issued has been insured by another title company.

(11) A title company must not pay a producer member of its board of directors fees in excess of those paid to non-producer directors.

(12) A title company must not enter into, agree to, or pay anything of value to a producer under any marketing agreement, access agreement, advertising agreement or any similar agreement.

(13) A title company must not make a donation to any charity in any manner that can reasonably be associated with a producer in exchange for the referral of title insurance business or obtaining customer service information from the title company.

(14) A title company must not pay any fee or consideration to any producer that is in any manner based in whole or in part on the number of transactions between the title company and the producer, regardless of the service being provided.

(15) A title company must not provide escrow, closing, or settlement services for a charge (independent of the rate charged for involved title insurance) that is less than the title company's actual cost either for:

(a) The cost of all parties to the escrow; or

(b) One party's proportionate share of the cost of the escrow.

NEW SECTION

WAC 284-29-265 Recordkeeping. (1) A title company must keep and maintain complete, accurate, and sufficient records to demonstrate compliance with WAC 284-29-200 through this section and keep them for a period of five years after the end of the year during which any thing of value was given to a producer.

(2) All records of a title company kept in order to meet the terms of WAC 284-29-200 through this section must be made available to the commissioner or the commissioner's representative during regular business hours.

(3) Failure of the title company to keep the records required by WAC 284-29-200 through this section is a violation of RCW 48.29.210.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 284-30-800 Unfair practices applicable to title insurers and their agents.

WSR 09-05-084

PERMANENT RULES

GAMBLING COMMISSION

[Order 641—Filed February 17, 2009, 2:33 p.m., effective March 20, 2009]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The Coalition for Responsible Gaming and Regulation ("coalition") is a group that includes manufacturers, distributors, charitable/nonprofit organizations, and commercial operators. Beginning in the fall of 2006, staff had several meetings with the coalition. During these meetings, the parties discussed the coalition's concerns about some aspects of the administrative case process and worked on a rules proposal. However, an agreement satisfactory to both parties was not reached. The coalition submitted a petition for rule change which was filed at the October 2008 commission meeting requesting a new rule that would require, upon

the request of any party, the presiding officer or the commissioners consider a list of fourteen aggravating and mitigating factors (included in the rule) when determining whether to modify a penalty sought by commission staff. As worded, the commissioners would have to take evidence of the fourteen factors, if requested by the licensee/applicant, even if they had not raised these factors at the administrative law judge hearing. At their January 2009 meeting, the commission discussed an amended version of the rule submitted by the petitioner. The petitioner submitted a second amended version for discussion at the February 2009 meeting. Staff also created an amended version for discussion in February. Just before the February meeting, the petitioner and staff reached a joint agreement for rule language. This joint option #4 was adopted at the February 2009 meeting.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 08-22-079 on November 4, 2008, and published on November 19, 2008.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 1, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 0, Repealed 0.

Date Adopted: February 13, 2009.

Susan Arland
Rules Coordinator

NEW SECTION

WAC 230-17-137 Guidelines for imposing penalties in disciplinary actions. (1) Without in any manner limiting the authority granted to the commission under chapter 9.46 RCW or other applicable law to impose the level and type of discipline it may deem appropriate, at the request of any party, the presiding officer may consider the following factors, along with such others as he or she deems relevant, in determining the administrative penalty to be assessed for the violation of a statute or rule:

(a) The risk posed to the public health, safety, or welfare by the violation;

(b) Whether there are special policy implications relating to the violation, for example, those regarding underage gambling;

(c) Whether, and how, the violations impacted players, for example, failure to pay a player, and player-supported jackpot violations;

(d) Whether the applicant, licensee, or permittee:

APPENDIX B

STATE OF WASHINGTON

MIKE KREIDLER
STATE INSURANCE COMMISSIONER



P.O. BOX 40255
OLYMPIA, WA 98504-0255
Phone: (360) 725-7000

OFFICE OF
INSURANCE COMMISSIONER

I do hereby certify that I am one of the people charged with the general control and supervision of all Orders issued or entered by this agency relative to the business of insurance (except State Workers' Compensation) which are transacted in the State of Washington, that I am charged with the administration of these items, and that this office is a department of record, having the custody of original documents.

I FURTHER CERTIFY that this is a full, true, and accurate copy of Order No. D07-308, In the Matter of Chicago Title Insurance Company, Final Order of Dismissal (Regarding Phase II), dated December 2, 2009, the same as the original on file in the Office of Insurance Commissioner of the State of Washington.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Insurance Commissioner of the State of Washington, this 22nd day of November, 2010.

Renee Molnes

Office of the Insurance Commissioner
Renee Molnes



STATE OF WASHINGTON

Phone: (360) 725-7000

MIKE KREIDLER
STATE INSURANCE COMMISSIONER



OFFICE OF
INSURANCE COMMISSIONER

HEARINGS UNIT
Fax: (360) 664-2782

DECLARATION OF MAILING
I declare under penalty of perjury under the laws of the State of Washington that on the date listed below, I mailed or caused delivery of a true copy of this document to the parties listed below.
DATED this 12 day of 12/09 at Tumwater, Washington.
Signed: Kelly Johnson

Patricia D. Petersen
Chief Hearing Officer
(360) 725-7105

Sally Johnson
Paralegal
(360) 725-7002
Sallyj@oic.wa.gov

BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

In the Matter of:)

) OIC No. D07-308
) OAH Docket No. 2008-INS-0002

CHICAGO TITLE)
INSURANCE COMPANY,)

) FINAL ORDER OF)
) DISMISSAL)
) (Regarding Phase II)

) An Authorized Insurer.)
)

To: David C. Neu, Esq.
K&L/Gates
925 Fourth Ave., Suite 2900
Seattle, WA 98104-1158

Chicago Title Insurance Company
601 Riverside Ave.
Jacksonville, FL 32204

Copy To: Mike Kreidler, Insurance Commissioner
Mike Watson, Chief Deputy Commissioner
Jim Odiorne, Deputy Commissioner for Company Supervision
Carol Sureau, Deputy Commissioner, Legal Affairs
Alan M. Singer, Staff Attorney, Legal Affairs
Post Office Box 40255
Olympia, Washington 98504-0255

Chicago Title Insurance Company (Chicago Title) is a title insurance company holding a Certificate of Authority to transact title insurance in the state of Washington. Land Title Company of Kitsap County, Inc. (Land Title) is a licensed title insurance agent appointed by Chicago Title.

On January 25, 2008, the Office of the Insurance Commissioner (OIC) entered a Notice of Hearing, and on March 27, 2008 an Amended Notice of Hearing, in this matter to impose penalties upon Chicago Title for seventeen alleged violations committed by Land Title. In the Notice of Hearing and Amended Notice of Hearing, the OIC asserts that Chicago Title, through its duly appointed title insurance agent, Land Title, violated WAC 284-30-800, the Illegal Inducement Regulation, and for these violations the OIC seeks to impose a fine of \$155,000 against Chicago Title pursuant to RCW 48.05.185.

On February 29, 2008, this matter was referred to the Office of Administrative Hearings (OAH) and the administrative hearing was held before Administrative Law Judge Cindy L. Burdue (ALJ), with instructions from the undersigned OIC's instructions to hear the case and enter Initial or Recommended Findings of Facts, Initial Conclusions of Law and Initial Order. During the course of that proceeding, the ALJ entered a First Pre-Hearing Order, and later an Amended First Pre-Hearing Order, bifurcating the issues in this case into two phases: Phase I involves *the preliminary issue of the legal responsibility of [Chicago] for the actions of Land Title ... being determined first*. Depending on the outcome of Phase I, the ALJ proposes to hear argument on, and enter an Initial or Recommended Order relative to, Phase II, which is the issue of *whether the expenditures of the Kitsap County company [Land Title] violate the law*. In accordance with this plan, on October 30, 2008, the ALJ entered Initial Findings of Facts, Initial Conclusions of Law and Initial Order Granting Summary Judgment (Initial Order) in Phase I, recommending that the undersigned enter Final Findings of Facts, Final Conclusions of Law and Final Order (Final Order) ruling that Chicago Title is not liable for the illegal acts of Land Title in violating the Inducement Regulation and statute. (It is noted that in Initial Finding of Fact No. 2, the ALJ states that for purposes of *this Motion* [for Summary Judgment] *only*, it is stipulated that Land Title did commit the alleged violations of the Illegal Inducement Regulation.)

On April 24, 2009, the undersigned entered Final Findings of Facts, Conclusions of Law and Order Denying Chicago Title's Motion for Summary Judgment (Phase I of Hearing). The undersigned did not adopt the ALJ's Initial Order Granting Chicago Title Insurance Company's Motion for Summary Judgment and ordered the hearing file be transferred back to the OAH for commencement of Phase II of this proceeding. In the Final Order it was determined that the OIC can hold Chicago Title responsible for the illegal acts of its legally appointed insurance agent, Land Title, in violating the Illegal Inducement Regulation and statute.

On October 26, 2009, the undersigned received an Initial Order of Dismissal from the ALJ at OAH regarding the above referenced matter, along with a Stipulation and Agreement executed by the parties on September 28 and October 5, 2009. Therein, the OIC and Chicago Title agreed that Phase II of this matter be settled and dismissed, as the parties had reached agreements on the terms of settlement of Phase II in both 1) the situation where the undersigned's Final Order in Phase I is upheld by the applicable appellate court; and 2) the situation where the undersigned's Final Order in Phase I is reversed by the applicable appellate court. Said Stipulation and Agreement is attached hereto and incorporated herein.

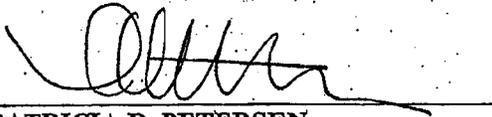
FINAL ORDER OF DISMISSAL
(Phase II), No. D07-308
Page 3

ORDER

Based upon the above activity,

IT IS HEREBY ORDERED that the proceedings in the matter of Chicago Title Insurance Company (Phase II), Docket No. D07-308 are hereby terminated.

This Order is entered this 2nd day of December, 2009, at Tumwater, Washington, pursuant to Title 48 RCW, Title 34 RCW and regulations pursuant thereto.



PATRICIA D. PETERSEN
Presiding Officer
Chief Hearing Officer

IN THE MATTER OF:

CHICAGO TITLE INSURANCE
COMPANY,

Respondent.

ORDER NO. D07-308

STIPULATION AND AGREEMENT

The Insurance Commissioner of the State of Washington ("OIC"), pursuant to the authority set forth in Title 48 RCW, including RCW 48.05.185, makes the following:

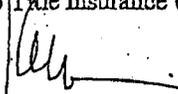
I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

- 1) Chicago Title Insurance Company ("CTIC") is a title insurance company holding a Certificate of Authority to transact title insurance in the state of Washington. Land Title Company of Kitsap County, Inc. ("Land Title") is a licensed title insurance agent appointed by CTIC.
- 2) Between December 1, 2006 and March 31, 2007, Land Title gave services and other things of value exceeding \$25.00 in value to producers of title insurance business in violation of WAC 284-30-800. These violations were alleged in the OIC's Amended Notice of Hearing dated March 28, 2008 ("Hearing Notice," incorporated herein by reference), in which the OIC commenced an administrative proceeding ("Administrative Proceeding") to impose a fine against CTIC for these violations. CTIC contested this Administrative Proceeding and demanded a hearing.
- 3) The Administrative Proceeding was bifurcated into two phases. The first phase ("Phase I") addressed the issue of whether the OIC may impose fines against CTIC pursuant to RCW 48.05.185 for the actions of its agent, Land Title. If Phase I resulted in a determination in the OIC's favor, a second hearing on the merits would be held ("Phase II") to determine whether the specific acts of Land Title violated WAC 284-30-800.

Attachment A

EXECUTED this 28th day of September, 2009.

Chicago Title Insurance Company

By: 

Printed Name: KEVIN R. CHIARELLO

Typed Corporate Title: Senior Vice President

III. ORDER

Pursuant to Title 48 RCW, including RCW 48.05.185, and the foregoing Findings of Fact and Conclusions of Law, and Consent to Order, the OIC hereby enters the following order:

1) No less than fifteen (15) and no more than thirty (30) days after the conclusion of the Appeals Process, and the exhaustion by either party of all rights to appeal the Final Order or any order entered by the Thurston County Superior Court in the Superior Court Proceeding:

A. After exhaustion of the Appeals Process, if OIC prevails, CTIC agrees to pay a penalty of forty eight thousand three hundred and thirty four dollars (\$48,334) within thirty days of the date of entry of the final order in the Appeals Process;

B. If CTIC prevails after exhaustion of the Appeals Process, OIC agrees that it will not seek to take further administrative or judicial action against CTIC with respect to the allegations in OIC's Hearing Notice, and that this order shall have no force or effect.

2) In the event CTIC does not prevail after the conclusion of the Appeals Process, and fails to pay the foregoing fine within thirty (30) days of the conclusion of the Appeals Process, such shall result in the revocation of CTIC's Certificate of Authority and in the recovery of the fine through a civil action brought on behalf of the Insurance Commissioner by the Attorney General of the State of Washington.

ENTERED at Tumwater, Washington, this 5th day of October, 2009.

MIKE KREIDLER

Insurance Commissioner

By



Alan Michael Singer

Staff Attorney

Legal Affairs Division

APPENDIX C

1911 INSURANCE CODE

(TITLE XLV)

Session Laws, 1911, Ch. 49 [S.S.B. 6]

Rem. Code § 6059-1. Insurance Defined.

Within the intent of this act the business of apportioning and distributing losses arising from specified causes among all those who apply and are accepted to receive the benefits of such service, is public in character and requires that all those having to do with it shall at all times be actuated by good faith in everything pertaining thereto; shall abstain from deceptive or misleading practices, and shall keep, observe, and practice the principles of law and equity in all matters pertaining to such business. Upon the insurer, the insured, and their representatives shall rest the burden of maintaining proper practices in said business.

...

Rem. Code § 6059-2. Terms Defined.

...

The terms "company," "corporation," or "insurance company" or "insurance corporation," in this act, unless the context otherwise requires, includes all corporations, associations, partnerships, or individuals engaged as insurers in the business of insurance.

...

"Agent" or "Insurance Agent" is a person, co-partnership, corporation, attorney, board or committee duly appointed and authorized by an insurance company, to solicit applications for insurance to be known as a soliciting agent, or to solicit applications and effect insurance in the name of the company, to be known as a recording or policy writing agent, and to discharge such other duties as may be vested in or required of the agent by the company.

Rem. Code § 6059-44. Agents to Procure License Must Act Only for Admitted Companies.

No person, firm, or corporation, shall act as agent for any insurance company, in the transaction of any business of insurance within this state, or negotiate for, or place risks for any such company, or in any way or manner aid such company in effecting insurance, or otherwise in this state, except as provided in section seventy-five of this act, unless such company shall in all things have complied with the provisions of this act. Every insurance agent shall annually, on or before the first day of April, procure an agent's license from the commissioner, who shall make and keep a record thereof.

Rem. Code § 6059-45. Application for License.

No license shall be issued to any applicant for an agent's, solicitor's, or broker's license until such applicant shall have first made and filed in the commissioner's office an application therefor upon a form to be prescribed and furnished by the commissioner, which must show the applicant's name, business and residence address, name of company to be represented, whether as solicitor, agent, or general agent; present occupation, occupation for last twelve months, portion of time to be devoted to the work" previous insurance experience, and name of employers during five years next preceding, and such other information as the commissioner may require. The statements and answers made in the application shall be warranted by the applicant, and shall have the same force and effect as, if such statements and answers had been made by the applicant as a sworn witness testifying in a superior court in this state. Such application must be approved by the company to be so represented; and in the case of an application for an insurance broker's license it must also show how long applicant has been engaged in the insurance business and in what branches, under whom applicant received his training, what income, if any, applicant has other than to be derived from such business, and financial condition of applicant. It shall be the duty of the commissioner to withhold any license applied for, or revoke any license issued to any person or party, or to his or their employee, when he is satisfied that the principal use of such license is to effect insurance upon the property or liability of such person or party, or to circumvent the enforcement of the anti-rebate law: *Provided*, That each agent shall be required to file but one application, regardless of the number of companies he represents: *And provided, further*, **That no person shall act as agent unless each company, corporation or association represented by such person shall have paid a license fee as provided in this act; and the agent's license fee provided for in section seventeen of this act shall be paid by each company, corporation or association represented by him; and if in the agent's application the names of several companies appear, then and in that event, each company so represented must pay the agent's license fee provided for in this act.**

APPENDIX D

RELEVANT 1947, 2008 INSURANCE LAWS
(former Title 45/current Title 48 RCW)

RCW 48.01.030. *Public interest.*

The business of insurance is one affected by the public interest, requiring that all persons be actuated by good faith, abstain from deception, and practice honesty and equity in all insurance matters. Upon the insurer, the insured, their providers, and their representatives rests the duty of preserving inviolate the integrity of insurance.

[1995 c 285 § 16; 1947 c 79 § .01.03; Rem. Supp. 1947 § 45.01.03.]

RCW 48.17.010. *"Agent" defined.*

"Agent" means any person appointed by an insurer to solicit applications for insurance on its behalf. If authorized so to do, an agent may effectuate insurance contracts. An agent may collect premiums on insurances so applied for or effectuated.

[1985 c 264 § 7; 1981 c 339 § 9; 1947 c 79 § .17.01; Rem. Supp. 1947 § 45.17.01.]

RCW 48.01.070. *"Person" defined.*

"Person" means any individual, company, insurer, association, organization, reciprocal or interinsurance exchange, partnership, business trust, or corporation.

[1947 c 79 § .01.07; Rem. Supp. 1947 § 45.01.07.]

RCW 48.01.060. *"Insurance transaction" defined.*

"Insurance transaction" includes any:

- (1) Solicitation.
- (2) Negotiations preliminary to execution.
- (3) Execution of an insurance contract.
- (4) Transaction of matters subsequent to execution of the contract and arising out of it.
- (5) Insuring.

[1947 c 79 § .01.06; Rem. Supp. 1947 § 45.01.06.]

RCW 48.17.160. Appointment of agents — Revocation. (1947).

48.17.160 Appointment of agents-Revocation.

(1) Each insurer on appointing an agent in this state shall file written notice thereof in duplicate with the commissioner on forms as prescribed and furnished by him, and shall pay the filing fee therefor as provided in RCW 48.14.010. If then licensed, or as soon as licensed, the commissioner shall mail one copy of the appointment to the agent.

(2) Each such appointment shall continue in force until:

(a) The commissioner notifies the insurer that the person so appointed is no longer licensed as an agent by this state; or

(b) the appointment is revoked by the insurer by written notice of such revocation to the agent. The insurer shall forthwith file a duplicate copy of such notice of revocation with the commissioner. No fee shall be charged for filing such copy.

(3) Revocation of an appointment by the insurer shall be deemed to be effective as of the date designated in the notice as being the effective date if the notice is actually received by the agent prior to such designated date; otherwise, as of the earlier of the following dates:

(a) The date such notice of revocation was received by the agent.

(b) The date such notice, if mailed to the agent at his last address of record with the insurer, in due course should have been received by the agent.

[1947 c 79. § .17.16; Rem. Supp. 1947 § 45.17.16.]

RCW 48.17.160. Appointment of agents-Revocation-Expiration-Renewal. (2008)

(1) Each insurer appointing an agent in this state shall file written notice thereof with the commissioner on forms as prescribed and furnished by the commissioner, and shall pay the filing fee therefor as provided RCW 48.14.010. The commissioner shall return the appointment of agent form to the insurer for distribution to the agent. The commissioner may adopt regulations establishing alternative appointment procedures for individuals within licensed firms, corporations, or sole proprietorships who are empowered to exercise the authority conferred by the firm, corporate, or sole proprietorship license.

(2) Each such appointment shall be effective until the agent's license expires or is revoked, the appointment has expired, or written notice of termination of the appointment is filed with the commissioner, whichever occurs first.

(3) When the appointment is revoked by the insurer, written notice of such Revocation shall be given to the agent and a copy of the notice of revocation shall be mailed to the commissioner.

(4) Revocation of an appointment by the insurer shall be deemed to be effective as of the date designated in the notice as being the effective date if the

notice is actually received by the agent prior to such designated date; otherwise, as of the earlier of the following dates:

(a) The date such notice of revocation was received by the agent.

(b) The date such notice, if mailed to the agent at his last address of record with the insurer, in due course should have been received by the agent.

(5) Appointments expire if not timely renewed. Each insurer shall pay the renewal fee set forth for each agent holding an appointment on the renewal date assigned the agents of the insurer by the commissioner. The commissioner, by rule, shall determine renewal dates. If a staggered system is used, fees shall be prorated in the conversion to a staggered system.

[1994 c 131 § 5; 1990 1sr ex.s. c 3 § 3; 1979 ex.s. c 269 § 2; 1967 c 150 § 20; 1959 c 225 § 6; 1955 c 303 § 13; 1947 c 79. § .17.16; Rem. Supp. 1947 § 45.17.16.]

RCW 48.02.060(1). *General powers and duties.*

(1) The commissioner has the authority expressly conferred upon him or her by or reasonably implied from the provisions of this code.

(2) The commissioner must execute his or her duties and must enforce the provisions of this code.

(3) The commissioner may:

(a) Make reasonable rules for effectuating any provision of this code, except those relating to his or her election, qualifications, or compensation. No such rules and regulations shall be effective prior to their being filed for public inspection in the commissioner's office.

(b) Conduct investigations to determine whether any person has violated any provision of this code.

(c) Conduct examinations, investigations, hearings, in addition to those specifically provided for, useful and proper for the efficient administration of any provision of this code.

[1947 c 79 § .02.06; Rem. Supp. 1947 § 45.02.06.]

RCW 48.30.010. *Unfair practices in general — Remedies and penalties.*

(1) No person engaged in the business of insurance shall engage in unfair methods of competition or in unfair or deceptive acts or practices in the conduct of such business as such methods, acts, or practices are defined pursuant to subsection (2) of this section.

(2) In addition to such unfair methods and unfair or deceptive acts or practices as are expressly defined and prohibited by this code, the commissioner

may from time to time by regulation promulgated pursuant to chapter 34.05 RCW, define other methods of competition and other acts and practices in the conduct of such business reasonably found by the commissioner to be unfair or deceptive after a review of all comments received during the notice and comment rule-making period.

(3)(a) In defining other methods of competition and other acts and practices in the conduct of such business to be unfair or deceptive, and after reviewing all comments and documents received during the notice and comment rule-making period, the commissioner shall identify his or her reasons for defining the method of competition or other act or practice in the conduct of insurance to be unfair or deceptive and shall include a statement outlining these reasons as part of the adopted rule.

All existing enforcement avenues in Title 48 were made available to the Commissioner to utilize whenever unfair practices were violated. RCW 48.30.010(6).

(b) The commissioner shall include a detailed description of facts upon which he or she relied and of facts upon which he or she failed to rely, in defining the method of competition or other act or practice in the conduct of insurance to be unfair or deceptive, in the concise explanatory statement prepared under RCW 34.05.325(6).

(c) Upon appeal the superior court shall review the findings of fact upon which the regulation is based de novo on the record.

(4) No such regulation shall be made effective prior to the expiration of thirty days after the date of the order by which it is promulgated.

(5) If the commissioner has cause to believe that any person is violating any such regulation, the commissioner may order such person to cease and desist therefrom. The commissioner shall deliver such order to such person direct or mail it to the person by registered mail with return receipt requested. If the person violates the order after expiration of ten days after the cease and desist order has been received by him or her, he or she may be fined by the commissioner a sum not to exceed two hundred and fifty dollars for each violation committed thereafter.

(6) If any such regulation is violated, the commissioner may take such other or additional action as is permitted under the insurance code for violation of a regulation.

(7) An insurer engaged in the business of insurance may not unreasonably deny a claim for coverage or payment of benefits to any first party claimant. "First party claimant" has the same meaning as in RCW 48.30.015.

[2007 c 498 § 2 (Referendum Measure No. 67, approved November 6, 2007); 1997 c 409 § 107; 1985 c 264 § 13; 1973 1st ex.s. c 152 § 6; 1965 ex.s. c 70 § 24; 1947 c 79 § .30.01; Rem. Supp. 1947 § 45.30.01.]

RCW 48.30.140(1). *Rebating.*

Except to the extent provided for in an applicable filing with the commissioner then in effect, no insurer, insurance producer, or title insurance agent shall, as an inducement to insurance, or after insurance has been effected, directly or indirectly, offer, promise, allow, give, set off, or pay to the insured or to any employee of the insured, any rebate, discount, abatement, or reduction of premium or any part thereof named in any insurance contract, or any commission thereon, or earnings, profits, dividends, or other benefit, or any other valuable consideration or inducement whatsoever which is not expressly provided for in the policy.

...

[2008 c 217 § 35; 1994 c 203 § 3; 1990 1st ex.s. c 3 § 8; 1985 c 264 § 14; 1975-'76 2nd ex.s. c 119 § 3; 1947 c 79 § .30.14; Rem. Supp. 1947 § 45.30.14.]

RCW 48.30.150(1). *Illegal inducements.*

(1) No insurer, insurance producer, title insurance agent, or other person shall, as an inducement to insurance, or in connection with any insurance transaction, provide in any policy for, or offer, or sell, buy, or offer or promise to buy or give, or promise, or allow to, or on behalf of, the insured or prospective insured in any manner whatsoever:

(a) Any shares of stock or other securities issued or at any time to be issued on any interest therein or rights thereto; or

(b) Any special advisory board contract, or other contract, agreement, or understanding of any kind, offering, providing for, or promising any profits or special returns or special dividends; or

(c) Any prizes, goods, wares, or merchandise of an aggregate value in excess of twenty-five dollars.

[1990 1st ex.s. c 3 § 9; 1975-'76 2nd ex.s. c 119 § 4; 1957 c 193 § 18; 1947 c 79 § .30.15; Rem. Supp. 1947 § 45.30.15.]

RCW 48.05.040. *Certificate of authority — Qualifications.*

To qualify for and hold a certificate of authority an insurer must:

(1) Be a stock, mutual, or reciprocal insurer of the same general type as may be formed as a domestic insurer under the provisions of chapter 48.06 RCW of this

code, but this requirement shall not apply as to domestic mutual property insurers which, as of January 1, 1957, were lawfully transacting insurance on the assessment plan; and

(2) Have capital funds as required by this code, based upon the type and domicile of the insurer and the kinds of insurance proposed to be transacted; and

(3) Transact or propose to transact in this state insurances authorized by its charter, and only such insurance as meets the standards and requirements of this code; and

(4) Fully comply with, and qualify according to, the other provisions of this code.

[1957 c 193 § 1; 1947 c 79 § .05.04; Rem. Supp. 1947 § 45.05.04.]

RCW 48.05.140(1). Certificate of authority — Discretionary refusal, revocation, suspension.

The commissioner may refuse, suspend, or revoke an insurer's certificate of authority, in addition to other grounds therefor in this code, if the insurer:

(1) Fails to comply with any provision of this code other than those for violation of which refusal, suspension, or revocation is mandatory, or fails to comply with any proper order or regulation of the commissioner. ...

[2008 c 217 § 2; 1973 1st ex.s. c 152 § 1; 1969 ex.s. c 241 § 3; 1967 c 150 § 4; 1947 c 79 § .05.14; Rem. Supp. 1947 § 45.04.14.]

RCW 48.05.185. Fine in addition or in lieu of suspension, revocation, or refusal.

After hearing or with the consent of the insurer and in addition to or in lieu of the suspension, revocation, or refusal to renew any certificate of authority the commissioner may levy a fine upon the insurer in an amount not less than two hundred fifty dollars and not more than ten thousand dollars. The order levying such fine shall specify the period within which the fine shall be fully paid and which period shall not be less than fifteen nor more than thirty days from the date of such order. Upon failure to pay any such fine when due the commissioner shall revoke the certificate of authority of the insurer if not already revoked, and the fine shall be recovered in a civil action brought in behalf of the commissioner by the attorney general. Any fine so collected shall be paid by the commissioner to the state treasurer for the account of the general fund.

[1980 c 102 § 1; 1975 1st ex.s. c 266 § 3; 1965 ex.s. c 70 § 3.]

RCW 48.17.530. Commissioner may place on probation, suspend, revoke, or refuse to issue or renew a license.

(1) The commissioner may place on probation, suspend, revoke, or refuse to issue or renew an adjuster's license, an insurance producer's license, a title

insurance agent's license, or any surplus line broker's license, or may levy a civil penalty in accordance with RCW 48.17.560 or any combination of actions, for any one or more of the following causes:

(a) Providing incorrect, misleading, incomplete, or materially untrue information in the license application;

(b) Violating any insurance laws, or violating any rule, subpoena, or order of the commissioner or of another state's insurance commissioner;

(c) Obtaining or attempting to obtain a license through misrepresentation or fraud;

(d) Improperly withholding, misappropriating, or converting any moneys or properties received in the course of doing insurance business;

(e) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;

(f) Having been convicted of a felony;

(g) Having admitted or been found to have committed any insurance unfair trade practice or fraud;

(h) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in this state or elsewhere;

(i) Having an insurance producer license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory;

(j) Forging another's name to an application for insurance or to any document related to an insurance transaction;

(k) Improperly using notes or any other reference material to complete an examination for an insurance license;

(l) Knowingly accepting insurance business from a person who is required to be licensed under this title and is not so licensed, other than orders for issuance of title insurance on property located in this state placed by a nonresident title insurance agent authorized to act as a title insurance agent in the title insurance agent's home state; or

(m) Obtaining a loan from an insurance client that is not a financial institution and who is not related to the insurance producer by birth, marriage, or adoption, except the commissioner may, by rule, define and permit reasonable arrangements.

(2) The license of a business entity may be suspended, revoked, or refused if the commissioner finds that an individual licensee's violation was known or should have been known by one or more of the partners, officers, or managers acting on behalf of the partnership or corporation, and the violation was neither reported to the commissioner nor corrective action taken.

(3) The commissioner shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this chapter and this title against

any person who is under investigation for or charged with a violation of this chapter or this title, even if the person's license or registration has been surrendered or has lapsed by operation of law.

(4) The holder of any license which has been revoked or suspended shall surrender the license certificate to the commissioner at the commissioner's request.

(5) The commissioner may probate a suspension or revocation of a license under reasonable terms determined by the commissioner. In addition, the commissioner may require a licensee who is placed on probation to:

(a) Report regularly to the commissioner on matters that are the basis of the probation;

(b) Limit practice to an area prescribed by the commissioner; or

(c) Continue or renew continuing education until the licensee attains a degree of skill satisfactory to the commissioner in the area that is the basis of the probation.

(6) At any time during a probation term where the licensee has violated the probation order, the commissioner may:

(a) Rescind the probation and enforce the commissioner's original order; and

(b) Impose any disciplinary action permitted under this section in addition to or in lieu of enforcing the original order.

[2007 c 117 § 29; 1973 1st ex.s. c 152 § 2; 1969 ex.s. c 241 § 11; 1967 c 150 § 23; 1947 c 79 § .17.53; Rem. Supp. 1947 §45.17.53 .]

RCW 48.17.595. Termination of business relationship with an insurance producer or title insurance agent — Notice — Confidentiality of information — Immunity from civil liability.

(1) An insurer or authorized representative of the insurer that terminates the appointment, employment, contract, or other insurance business relationship with an insurance producer or title insurance agent shall notify the commissioner within thirty days following the effective date of the termination, using a format prescribed by the commissioner, if the reason for termination is one of the reasons set forth in RCW 48.17.530 or the insurer has knowledge the insurance producer or title insurance agent was found by a court, government body, or self-regulatory organization authorized by law to have engaged in any of the activities in RCW 48.17.530. Upon the written request of the commissioner, the insurer shall provide additional information, documents, records, or other data pertaining to the termination or activity of the insurance producer or title insurance agent.

(2) An insurer or authorized representative of the insurer that terminates the appointment, employment, or contract with an insurance producer or title insurance agent for any reason not set forth in RCW 48.17.530, shall notify the commissioner within thirty days following the effective date of the termination, using a format prescribed by the commissioner. Upon written request of the commissioner, the

insurer shall provide additional information, documents, records, or other data pertaining to the termination.

(3) The insurer or the authorized representative of the insurer shall promptly notify the commissioner in a format acceptable to the commissioner if, upon further review or investigation, the insurer discovers additional information that would have been reportable to the commissioner in accordance with subsection (1) of this section had the insurer then known of its existence.

(4) A copy of the notification to the commissioner shall be provided to the insurance producer or title insurance agent.

(a) Within fifteen days after making the notification required by subsections (1), (2), and (3) of this section, the insurer shall mail a copy of the notification to the insurance producer or title insurance agent at the insurance producer's or title insurance agent's last known address. If the insurance producer or title insurance agent is terminated for cause for any of the reasons listed in RCW 48.17.530, the insurer shall provide a copy of the notification to the insurance producer or title insurance agent at the insurance producer's or title insurance agent's last known address by certified mail, return receipt requested, postage prepaid, or by overnight delivery using a nationally recognized carrier.

(b) Within thirty days after the insurance producer or title insurance agent has received the original or additional notification, the insurance producer or title insurance agent may file written comments concerning the substance of the notification with the commissioner. The insurance producer or title insurance agent shall, by the same means, simultaneously send a copy of the comments to the reporting insurer, and the comments shall become a part of the commissioner's file and accompany every copy of a report distributed or disclosed for any reason about the insurance producer or title insurance agent as permitted under subsection (6) of this section.

....

(7) An insurer, the authorized representative of the insurer, insurance producer, or title insurance agent that fails to report as required under the provisions of this section or that is found to have reported with actual malice by a court of competent jurisdiction may, after notice and hearing, have its license or certificate of authority suspended or revoked, and may be fined in accordance with this title.

[2007 c 117 § 32.]

RCW 48.98.005. Definitions.

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Actuary" means a person who is a member in good standing of the American Academy of Actuaries.

(2) "Insurer" means a person having a certificate of authority in this state as an insurance company under RCW 48.01.050.

(3) "Managing general agent" means:

(a) A person who manages all or part of the insurance business of an insurer, including the management of a separate division, department, or underwriting office, and acts as a representative of the insurer whether known as a managing general agent, manager, or other similar term, and who, with or without the authority, either separately or together with affiliates, produces, directly or indirectly, and underwrites an amount of gross direct written premium equal to or more than five percent of the policyholder surplus as reported in the last annual statement of the insurer in any one quarter or year together with one or more of the following activities related to the business produced:

(i) Adjusts or pays claims in excess of an amount to be determined by the commissioner; or

(ii) Negotiates reinsurance on behalf of the insurer.

(b) Notwithstanding (a) of this subsection, the following persons may not be managing general agents for purposes of this chapter:

(i) An employee of the insurer;

(ii) A United States manager of the United States branch of an alien insurer;

(iii) An underwriting manager who, under a contract, manages all of the insurance operations of the insurer, is under common control with the insurer, subject to the insurer holding company act, chapter 48.31B RCW, and whose compensation is not based on the volume of premiums written; or

(iv) The attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or interinsurance exchange under powers of attorney.

(4) "Underwrite" means to accept or reject risks on behalf of the insurer.

[1993 c 462 § 35.]

RCW 48.98.025. Examinations — Acts of a managing general agent are acts of the insurer.

The acts of the managing general agent are considered to be the acts of the insurer on whose behalf it is acting. A managing general agent may be examined as if it were the insurer, as provided in chapter 48.03 RCW.

[1993 c 462 § 39.]

NO. 40752-3-II

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON
COURT OF APPEALS
DIVISION II
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BY _____
REPUTED

CHICAGO TITLE INSURANCE
COMPANY, an Authorized Insurer,

Appellant,

v.

WASHINGTON STATE OFFICE OF
THE INSURANCE COMMISSIONER,

Respondent.

CERTIFICATE OF
SERVICE

I, Jeanette Baluyut, declare as follows:

1. I am over the age of 18 years, am competent to testify, and have personal knowledge of the matters stated herein.

2. I hereby certify that on January 10, 2011, I caused the Respondent's Brief and this Certificate of Service to be served upon the parties herein, as indicated below:

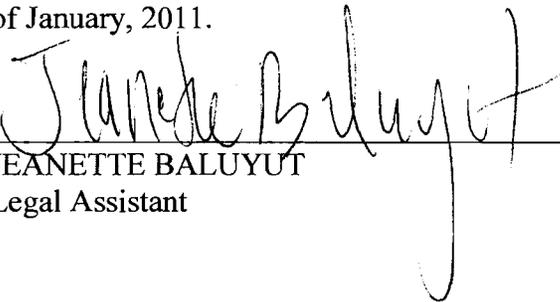
Matthew J. Segal
David C. Neu
Sarah C. Johnson
Jessica A. Skelton
K&L Gates LLP
925 Fourth Avenue, Suite 2900
Seattle, WA 98104

- U.S. Mail
- Overnight Express
- By Fax:

ORIGINAL

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 10th day of January, 2011.


JEANETTE BALUYUT
Legal Assistant