Comments of Consumer Representatives on
Draft “NAIC Title Shopping Tool” and
“Best Practices for Marketing a Title Shopping Tool to Consumers”

December 8, 2014

The undersigned are designated NAIC consumer representatives with decades of experience and professional expertise in the development and deployment of effective information and disclosures to consumers of financial services generally and consumers of insurance, specifically. We have collectively participated in the development of dozens of buying guides, disclosures and educational materials for various lines of insurance at the NAIC over the past 25 years.

We do not support and do not endorse the draft “shopping tool” and “best practices for marketing” as useful or effective information to empower consumers or regulators for several reasons. The fact that consumer representatives with decades of experience and professional expertise in developing effective information, education and disclosures for consumers of financial products do not support or endorse the working group’s draft work products should signal the working group that there is a problem with these work products.

The work products are not responsive to the working group’s charge.

The working group’s charge is:

Determine the feasibility of promoting effective consumer shopping for title agents and insurers without delaying real estate closing schedules. Consider developing best practices for the design and implementation of title cost comparison guides for consumers.

Rather than examining the feasibility of promoting effective consumer shopping or developing best practices for implementation of title cost comparison guides, the working group decided to develop a lengthy overview of home buying or refinancing, which includes discussion of title insurance. The working group’s products contain no analysis of the feasibility of effective consumer shopping for title agents and insurers nor best practices for the design and implementation of title cost comparison guides for consumers.

The rationale offered for a booklet providing an overview of the home purchase or refinance process instead of work products focusing on title insurance is without empirical evidence and is based on flawed logic.

The working group has explained that early in the process of its work it decided not to develop a work product focusing on title insurance because consumers are not interested in title insurance, but that consumers would be interested in information covering the broader purchase or refinance process and, by including title insurance information in this broader work product, consumers would then be exposed to and be more receptive to information about title insurance.
As with other aspects of the working group’s activities, there has been no testing of this thesis or any empirical evidence to support the conclusion that a work product responsive to the working group’s charges and which focused on providing title insurance information to consumers at critical points in the home purchase or refinance process would not be effective.

Further, the working group has not only failed to test its theory that targeted title insurance information would be ineffective at empowering and uninteresting to consumers, but has also failed to test its theory that burying title information into a broader purchase / refinance guide will magically peak consumers’ interest in title insurance.

The working group has failed to analyze the dynamics of title insurance markets to guide its efforts to develop effective information to empower consumers.

The title insurance industry is dominated by just four title insurers who write 85% of all title premium in a market characterized by reverse competition. This means that there is little or no price competition to win market share. Rather, marketing efforts by title insurers are directed at real estate professionals in a position to refer business. Title insurers’ reference to “customers” means real estate developers, lenders, attorneys, real estate agents and mortgage brokers. To title insurers, “customer” does not mean the actual consumer purchasing the title insurance.

The working group’s draft work products do not reference or reflect the dynamics of title insurance markets. Rather, the draft work products are the same type of information products developed for auto, homeowners or life insurance – products sold in more normally-competitive markets.

There are several implications of reverse competition in title insurance markets for developing consumer information, education and disclosure. First, title insurers have spent decades and huge sums to build institutional relationships with those real estate professionals in a position to steer business. In some cases, this is a formal affiliated business arrangement. In other cases, there are marketing service agreements with the referrers of business. In yet other cases, there are illegal kickbacks to secure referrals. In a market with these institutional relationships, it is unclear why the working group expects the entities with a vested interest in the current institutional arrangements to suddenly empower consumers to overcome these institutional arrangements.

Second, because of the institutional arrangements and reverse competition that characterizes title insurance markets, it is essential to identify the key messages which might empower consumers and the critical time to provide those messages so that the consumer can timely act on that information or disclosure. The draft work products do not address either the key messages or critical timing for distribution of the information to consumers. There is only one message highlighted in the draft booklet on page 7: Make sure you understand what you are being asked to sign. There are no highlighted messages related to title insurance.
Third, the draft work products do not address when and how to distribute the critical information to consumers. The draft booklet covering the home purchase or refinance process is presented in a format similar to that of NAIC buyer’s guides. The draft marketing practices document is a list of organizations who might distribute the booklet. There does not appear to be any recognition by the working group of the transition to internet-provided information or the use by consumers of mobile technology for research. Fifteen years ago, it would have made no sense to develop a title rate comparison tool which consumers could access via a mobile phone, but today such an effort is feasible and may empower consumers if consumers were prompted to shop at the critical juncture of the purchase or refinance process.

The “Best Practices for Marketing a Title Insurance Shopping Tool to Consumers” contains no best practices, but simply a laundry list of ideas about how to distribute the booklet and a list of organizations who might distribute the booklet.

A best practice is a description of the optimal activities necessary to achieve a desired outcome. The document entitled “Best Practices for Marketing a Title Insurance Shopping Tool to Consumers” contains no best practice information. Rather, it contains a list of bullet points on how departments of insurance, title insurers, title agents or other real estate professionals might distribute the guide. For example, one of the “best practices” is “State DOIs should optimize social media sites as promotional tools.” This is not a best practice – it is a goal with no information to assist the department of insurance in actually achieving the goal. Similarly, another bullet is “State DOIs should research search engine optimization (SEO) strategies to ensure the shopping tool is listed in the top search results for specific words queried.” What exactly would a state department of insurance do to accomplish this?

Another bullet is “State DOIs should design a marketing campaign geared at the promotion of the shopping tool.” Yet, there is nothing about what such a marketing campaign would look like, what it would cost, to whom the marketing would be directed or any information to assist a department in developing such a “marketing campaign.”

A half dozen of the “best practice” bullets are “partnering” with title insurers, title agents, the title insurer trade association, attorneys, and various real estate professionals to promote the shopping tool on their websites. This, of course, brings us back to the critical step of analyzing the market dynamics of title insurance. On what basis would we expect the title insurers, title agents and real estate professionals who have developed institutional relationships to discourage actual consumers from shopping for title insurance to actively promote information and disclosures that runs counter to their financial interest?

The working group’s draft booklet is largely duplicative of other resources available for consumers regarding the home purchase or refinance process.

It is unclear why the working group believes another “resource” on home buying or financing is needed or how its work product fills some gap in the existing universe of such information. The Consumer Financial Protection Bureau, which utilized state-of-the-art consumer testing and insights from behavioral economics in the development of its consumer information and
disclosures for mortgages and home buying has a web site and materials dedicated to the same issues covered by the working group’s booklet: Owning A Home at http://www.consumerfinance.gov/owning-a-home/

The CFPB Owning A Home website and related materials – including a “closing check list” and “closing documents explained” – are weak on the issue of title insurance. Instead of duplicating much of the CFPB’s work with the draft booklet, the working group could have developed materials responsive to its charge and developed materials which complemented and augmented the CFPB materials on the home buying process.

**The draft booklet is too long to be useful to or used by consumers.**

We have commented to the working group on several occasions that the draft booklet is too lengthy and not formatted in a manner to be used by or useful to consumers. We have urged the working group to test the booklet with consumers to determine if and how consumers would find it useful.

**The working group is unclear about whether its draft booklet is designed for use by consumers or by state departments of insurance.**

When we commented to the working group about the length of the draft booklet, the working group responded that the booklet was intended for use by state insurance departments and the draft booklet was “comprehensive” to allow the state departments to extract the information the state felt was useful for its purposes. The lack of clarity about whether the working group’s draft documents are intended for use by consumers or by state insurance departments limits the usefulness or effectiveness of the work products for either audience.

**The working group’s concept that states can extract relevant portions of the draft booklet for their state-specific needs is flawed.**

The working group has explained on several occasions that the draft booklet covers a broad set of topics, but expects individual states to use those portions of the booklet that fit the state’s needs. This concept is flawed because a state that, for example, wanted to focus on title insurance would have no guidance on what portions of the draft booklet to include in a shorter disclosure targeted at, say, refinance consumers. Again, this concept reflects a lack of clarity by the working group about the intended users of the draft booklet.

**For the reasons set out above, we cannot endorse or support the proposed drafts as useful information for state insurance departments interested in developing shopping tools for consumers or as a shopping tool for title insurance consumers.**

We believe adoption and distribution of these work products would be harmful for at least two reasons. First, such adoption would surely lead to the use of scarce NAIC and state insurance department resources for ineffective consumer information and disclosures, steering valuable resources away from activities which would empower consumers. Second, adoption of these
materials would continue a tradition of NAIC consumer information, education and disclosure materials without the benefit of best practices, without consumer testing for effectiveness and without reliance on academic and economic expertise related to consumer information, education and disclosures. For example, the NAIC Transparency and Readability Working Group has been educating itself about Smart Disclosures and behavioral economics to empower these regulators with current tools for consumer information, education and disclosure.

Recognizing that the working group has disagreed and will continue to disagree with our comments, at this point, we recommend that the working group distribute the draft work products to all states who are not members of the working group and request that the state department staff responsible for title insurance and for consumer information and education review the documents and answer the following questions.

From: Title Shopping Tools Working Group  
To: State Department of Insurance Title insurance and Consumer Information/Education Staff  
Date:  
Re: Request for Your Review of “NAIC Title Shopping Tool” and “Best Practices for Marketing a Title Shopping Tool to Consumers”

The NAIC Title Shopping Tools Working Group has developed the attached materials to assist state insurance departments in the development of shopping tools for title insurance consumers. To ensure we get broad input from the states before finalizing the documents, we ask you to review the documents and answer the following short set of questions. You will see that the “NAIC Title Shopping Tool” document covers the entire home purchase or refinance closing process. Our intent was to provide a comprehensive document from which individual states could extract portions that the state felt was relevant or useful for its title shopping assistance efforts.

1. Do you find these documents useful in your efforts to assist consumers to shop for title insurance? Why or why not?

2. How might you use these shopping tool document or portions of the shopping tool document in your efforts to assist title insurance consumers?  
   a. What portion of the shopping tool document would you use? Why?

3. Do you find the marketing best practices helpful? Why or why not?

Thank you for your consideration.

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