



August 5, 2010

NAIC Title Statistical Plan Working Group
c/o Ms. Paula Sisneros
Colorado Division of Insurance
1560 Broadway, Suite 850
Denver, Colorado 80202

Dear Paula:

On behalf of the American Land Title Association, thank you for continuing to seek the land title industry's input into the work of the Title Statistical Plan Working Group. These comments are intended to be included in discussion during the Working Group's August 6, 2010, conference call.

At the beginning of this process, ALTA's identified the industry's principles that guide our thoughts on collecting statistical information from title agents: 1.) any data collection should be on a "go forward" basis; 2.) reporting should be simple and achievable; it should not overly burden title agents; 3.) smaller title agents should be exempt from reporting; and, 4) the plan should recognize that title agents in New Mexico and Texas have been reporting this data for years, and that title agents in other states should not be expected to report at the same level of detail currently required in New Mexico and Texas.

It appears that the nationwide title statistical plan that the Title Statistical Plan Working Group has developed meets the first criteria. However, there is not yet consensus among ALTA members as to whether the title statistical plan is simple and achievable or whether it overly burdens title agents. Some members feel it is overly burdensome, while others do not. It does appear that the Working Group has attempted to meet this criteria as well. It is not clear whether the Working Group intends to exempt the smallest of title agents from reporting. While there has been debate on this issue, there is substantial regulatory uncertainty over whether all business models will be required to report in a particular state. Finally, it appears that the Working Group has designed a title statistical plan that recognizes nearly every title agent who would be required to report has not had significant experience with the level of reporting provided by title agents in New Mexico and Texas.

Policy Counts

One additional outstanding question, which was discussed without resolution on the July 29, 2010, conference call, is whether in a "simultaneous issue policy," is a "policy" considered one policy or both the lender's and owner's policy. We encourage the Working Group to adopt instructions consistent with the underwriter "state page" form 2009-30BWG MOD, adopted by

the NAIC Blanks Committee last fall. These instructions state: “Number of Policies Issued During the Year[:] The number of policies issued means the number of original owner's policies and single issue loan policies issued but not simultaneous issue loan policies or closing protection letters.”

FTE Employees

The collection of Full-Time Equivalent (FTE) employment information on a quarterly basis continues to cause significant concern within the industry. We note that no cost-benefit analysis has been performed to determine regulatory burdens on the private sector. ALTA members believe that the benefit realized by collecting this information on a quarterly basis would not justify the cost to the industry of complying. We encourage regulators to start with an annual data collection and consider more frequent surveys if the data or other information developed warrants that level of reporting.

Confidentiality

We simply cannot stress enough how important it is that commercially sensitive information which has competitive implications need to be kept confidential. This protection will facilitate regulators’ collection of this information, and may even lead to more accurate reporting if regulators can assure title agents that their information will be held in confidence. There is no public policy argument for making this critical business information available to competitors. ALTA urges the NAIC to recommend to states that adopt the title statistical plan that they be clear that the information collected will be held confidential, by application of the appropriate state law, and will only be made public in aggregated form. For those states who do not have an applicable state confidentiality provision, one should be added legislatively. ALTA will work with state insurance departments to enact these protections if they are needed.

Implementation

We have additional concerns on how this type of data collection will be implemented by state regulators. We believe additional collaboration between regulators, industry and other stakeholders will need to work together to identify and remove barriers to implementation. As with the FTE issue discussed above, we encourage the NAIC and individual states that adopt the title statistical plan to first study the costs of performing this annual data collection for title agents and for insurance departments. We suspect that additional costs for insurance departments would simply be passed on to title agents. If there are additional costs, appropriate relief must be available to title agents to meet these costs.

We also encourage states that adopt or even consider adopting the title statistical plan to conduct a beta test to determine any additional considerations that would need to be made for state-specific issues. The title statistical plan is perhaps the closest we can get to a uniform data collection standard for the title insurance industry, there will be state-specific issues that will need to be resolved in order to ultimately make this information more useful to regulators and other stakeholders.

We suggest that this type of beta-testing be conducted with a narrow focus group of title agents, including title agents, direct operations of underwriters and attorney-agents. This testing should pinpoint and identify causes of concern in advance of data collection being required to be reported by a larger population of agents.

Title Agents' Value

Finally, ALTA recognizes the value in regulators understanding more about the nature of the businesses they regulate, particularly with title insurance. While the title statistical plan is a helpful roadmap to determining the income and expenses of title agencies, its key weakness is that it does not provide useful information about the product that results. We will continue to look for ways in which the value of the title search, exam and curative work that title agents perform to identify and correct errors and fraud and therefore prevent loss, can be better explained and demonstrated. If the errors and fraud that are detected were otherwise unidentified and uncorrected, consumers and policyholders would otherwise face a loss that result in a claim on their title insurance policy. Title agents' protect consumers and insurer solvency.

ALTA will continue to work to find ways in which the industry can provide valuable information to regulators and other stakeholders.

Sincerely,

A handwritten signature in blue ink that reads "Kurt Pfothauer" followed by a horizontal line.

Kurt Pfothauer
Chief Executive Officer