

LAW OFFICES OF
David L. Tedder, P.A.

604-A Bladen St. • Beaufort, South Carolina 29902
Mailing Address: P.O. Box 1282 • Beaufort, SC 29901-1282

Telephone
(843) 521-4222

David L. Tedder, Esq.
dave@tedderlawoffice.com

Fax Number
(843) 521-0082

May 5, 2010

Paula Sisneros
Chair, Title Statistical Plan Working Group
NAIC
Kansis City, MS

BY E-MAIL tp psimpson@naic.org

Re: Proposed NAIC Data Collection Effort

Dear Ms. Sisneros:

I am writing to you in two capacities; first in my personal capacity as an ALTA member and solo real estate attorney (I am also a title insurance agent), and secondly as the Chairman of the Research Task Force (RTF) of the Committee on Title, Conveyancing, and Bar Related Title Insurance (TCB), which is a Committee under the auspices of the General Practice, Solo and Small Firm Division of the American Bar Association. The TCB Committee and RTF members primarily are general practice, solo or small firm practitioners who appreciate the challenges presented to the real estate industry, especially in these current uncertain economic times. The TCB Committee and RTF focus on preserving the role of the attorney in consumer and small business transactions involving real estate, including bar related title insurance matters. The RTF has been following with great interest the proposed data call requirements.

I, and the members of the RTF appreciate the opportunity to comment on the NAIC Agent Data Collection effort. As you may know, attorney title agents tend not to view themselves as "being in the title insurance business." Many view their activities as agents as an extension of their broader real estate practices within a broader still legal practice. While there are some attorneys who limit their practices to real estate exclusively, this is a relatively small percentage of all attorney agents. As a personal example, I am also a City Attorney representing a municipality, and also do commercial and business law. I draft wills for my clients, and also provide land development consulting to other cities and land developers (I am a certified land planner). Personally, I am not aware of any attorneys who limit their activities to just acting as title agents.

Most attorneys view their primary regulatory body as their state supreme court or judicial department, not the insurance department. This is because the law license is viewed as paramount to any other license that a state may issue to an attorney. As a result, attorneys pay

very close attention to rules and requirements issued by the judicial branch regulators. An early step in any data call or information collection involving attorneys should be to consult with state judicial officials to ensure that they have no objection to this effort.

I think the major problem in collecting data from attorney agents will be that their internal accounting and financial systems are not likely to be sophisticated enough to collect and report data that is tied to title agent activities exclusively. Most firms use simple systems to track hours spent or transactions handled. In my experience there is little more than the grossest information maintained. Time expended on real estate closings are generally billed as a flat fee, and not tracked by hours. I do not, and am not aware of any other attorneys tracking their time spent on title insurance processing and underwriting. When agents wish to know how much premium income they generated in a year, they tend to call us or use the confirmation reports from the title insurance company rather than rely on their internal systems. This is because their systems will likely include a wide variety of income producing tasks.

In looking at the draft Statistical Report, I offer the following specific comments/observations from the point of view of an attorney agent:

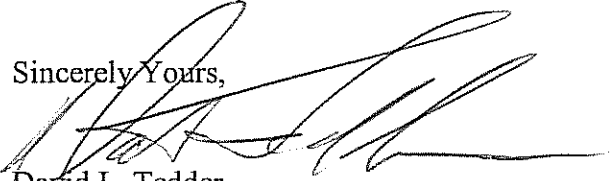
- 1) Line 9 Not applicable
- 2) Line 10 Not applicable
- 3) Line 11 Not applicable
- 4) Line 12 Not applicable
- 5) Line 17 For license issued by the Insurance Department, not judicial system
- 6) Line 18 Number of employees engaged in the preparation and issuance of title insurance commitments and policies (paralegals, assistants, etc.? The percentage of time devoted would likely be a guess)
- 7) Line 19 Number of employees licensed by the Insurance Department
- 8) Line 20 Number of unlicensed employees engaged in the preparation and issuance of title insurance commitments and policies (paralegals, assistants, etc.? The percentage of time devoted would likely be a guess)
- 9) Line 21 For employees engaged in the preparation and issuance of title insurance commitments and policies
- 10) Lines 12 - 29 Some of this type of data is not easily produced by a multi-practice attorney; would take a significant effort to compile
- 11) Line 30 Not applicable

- 12) Line 31 Not applicable
- 13) Line 32 Not applicable
- 14) Line 38 May not be applicable (In many, if not most states, income from attorney trust accounts is collected by the state for use in funding legal services programs.)
- 14) Lines 41-60 Most numbers would be skewed for a multi-practice attorney agent or firm; at best would be a percentage guess as to what would be solely applicable to the production of title insurance income for the firm. In many firms, real estate and title insurance is viewed as a “loss leader” in anticipation of creating a long-term relationship with the client for other legal needs.
- 15) Line 61 Not applicable
- 16) Line 66 It may not be possible to break out the title insurance-related portion of a firm's E&O policy; likely would just have a gross percentage attributable to real estate related matters
- 17) Line 67 It may not be possible to break out the title insurance-related portion of a firm's Fidelity/Surety Bond premium; likely would just have a gross percentage attributable to real estate related matters
- 18) Line 69 While total net income for an attorney agent/firm could be obtained, most net numbers for title insurance related net income for a multi-practice attorney agent or firm would at best be a percentage guess as to what would be solely applicable to the production of title insurance. That would be based on the best estimate of income or for title insurance-related activities (as deduced from a best guess at gross income minus gross expenses for these services)
- 19) Line 71 Net income for title insurance-related activities. See comment to Line 69.

Many of these items, easily obtainable from a “pure” title closing agency, would be very difficult for a small firm or solo practitioner to accurately report. While I could easily tell you the total of the premiums collected and the amounts distributed by getting the information from the title insurance companies for whom I write, getting that information out of my closing and trust accounting software is not as easy. Giving you a clear picture of what expenses are attributable to title insurance related activities in my office would be a mere educated guess, as all of my staff multi-task.

In closing, I would urge the Commissioners to take into consideration the very basic structural difference between a pure title closing company, a title insurance company, and an attorney office. If I have my statistics correct, of the approximately 26,000 ALTA members, about 14,000 are attorneys. While not all are small firm or solo practitioners, a significant percentage are. Please take into consideration the burden the current proposal for data collection would cause these members. Please feel free to provide this letter to the Commissioners.

Sincerely Yours,



David L. Tedder

Chairman, Research Task Force