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VIA OVERNIGHT MAIL AND EMAIL

Ms. Petra Wallace
National Association of Insurance Commissioners
2301 McGee Street, Ste. 800
Kansas City, Missouri 64108

Re: American Land Title Association Comments Relative To Draft Chapter 18

Dear Ms. Wallace:

The NAIC Market Regulation Handbook Working Group has published for comment proposed revisions to Draft Chapter 18 – Conducting the Title Insurance Company and Title Insurance Agent Examination. The American Land Title Association (“ALTA”) submits the following comments relative to the proposed revisions to the Chapter:

1. Proposed Revision From “Title Insurance Agent” To “Title Insurance Producer”.

Virtually all of the proposed revisions involve the proposed change of the present term “title insurance agent” to “title insurance producer.” It appears from the draft that the impetus for this change may be to conform the definition set forth in the Handbook to definitions used for property and casualty lines of insurance. To market their insurance, property and casualty insurers generally use agents commonly referred to as “producers,” who serve primarily as a marketing arm for the insurers. However, the functions performed by title insurance agents, while including a marketing component, are significantly different as they perform various “core services,” including title examination and evaluation to determine insurability, clearance of exceptions or objections, issuance of the preliminary commitment, issuance of the policies, and, where customary, conduct of the title search and the handling of the closing. Given the dramatically different functions performed by the title insurance agent as opposed to property and casualty insurance producers, the terminology which has evolved within the title insurance industry and adopted by the overwhelming majority of states is “title insurance agents.”

ALTA respectfully submits that the proposed change from “title insurance agent” to “title insurance producer” should not be adopted. Application of the term “producer”

to title insurance agents would create confusion, contradict statutory definitions in the overwhelming majority of States¹, contradict definitions used within the industry and contradict definitions found in the NAIC Title Insurance Agent Model Act² and the NAIC Title Insurers Model Act³.

This change creates unnecessary confusion and ambiguity is recognized and highlighted at page 40 of the proposed draft. In the second paragraph from the bottom, the text recognizes that, with the adoption of the proposed change, "the word producer may have two separate meanings." If the proposed change is rejected, then the proposed changes to this paragraph are unnecessary.

ALTA respectfully submits that there is no need to adopt the change, introduce ambiguity in terminology which contradicts established definitions long accepted within the title insurance industry and adopted and set forth in the vast majority of State statutory definitions as well as the two relevant NAIC Model Acts.⁴

2. Proposed Adoption Of The Term "Title Insurance Referral Entity."

ALTA further submits that adopting the term "title insurance referral entity" should be reconsidered in light of the fact that both the NAIC Title Insurance Agent Model Act and the NAIC Title Insurers Model Act use the term "Producer" to refer to individuals or firms such as lenders or real estate brokers that may refer title insurance business to a title insurance agent. See, NAIC 230-1.K; NAIC 628-1 § 3.M.

¹ Maryland is one of the few states that defines a title insurance agent statutorily as a "title insurance producer." See, MD Code, Insurance, § 10-101(h). New Jersey has adopted a mixed definition depending upon the specific functions performed. Title insurance agents are statutorily defined as "title insurance agents" relative to the functions performed in conjunction with the issuance of title insurance (see, N.J.S.A. § 17:46B-1.i) but uses a statutory definition of "title insurance producer" to address a company which performs closing or settlement functions (see, N.J.S.A. § 17:46B-10.1). California uses the defined term "underwritten title company" instead of title insurance agent within its statute (Cal. Ins. Code § 12340.5).

² The NAIC Title Insurance Model Act, consistent with industry terminology, defines the title insurance agent as a "Title Insurance agent" (see, NAIC 230-1 § 2.O). The term "Producer" is defined to be persons in the business of buying or selling real property, making loans secured by real property or acting as a representative of a person who buys or sells real property or makes loans secured by real property (see, NAIC 230-1.K).

³ Like the NAIC Title Insurance Agent Model Act, the NAIC Title Insurer Model Act defines the title insurance agent as a "Title insurance agent" or "agent" (see, NAIC 628-1 § 3.R) and uses the term "Producer" with reference to persons in the business of buying or selling real property, making loans secured by real property or acting as a representative of a person who buys or sells real property or makes loans secured by real property (see, NAIC 628-1 § 3.M).

⁴ The Real Estate Procedures Act (RESPA) also uses the term "agent."

ALTA notes that it is advised that the Title Insurance Working Group appears set to begin its review, and possible revision, of the two Model Acts. In light of this fact, it might be appropriate for the Market Regulation Handbook Working Group to defer consideration of the adoption of "title insurance referral entity" until such time as the Title Insurance Working Group completes its undertaking.

Please advise if you have any questions or if we may be of any further assistance.

Very truly yours,

MILLER STARR REGALIA



Richard G. Carlston

cc: Ed Miller