



**Ohio Association of Independent Title
Agents (OAITA)**

**1940 East 6th Street
Cleveland, Ohio 44114
(216) 373-2800**

July 31, 2008

VIA OVERNIGHT MAIL

Director Mary Jo Hudson
Ohio Department of Insurance
50 W. Town Street, Third Floor
Suite 300
Columbus, Ohio 43215

Re: Draft Proposed Rules OAC 3901-7-05 & 3901-7-06

Dear Director Hudson:

The Ohio Association of Independent Title Agents (OAITA) has reviewed two separate draft proposed rules regarding the business of title insurance in Ohio that were provided by the Ohio Department of Insurance (ODI). The Trustees of the OAITA hereby formally object to the adoption of both drafts. Our opposition to the draft proposed rules is guided by the following.

1. **3901-7-05 (Insuring over the standard survey exception in title insurance policies.)**
 - a. **The draft proposed rule conflicts with title insurance underwriting guidance pertaining to the issuance of ALTA Expanded Owner's Policies.**

The draft proposed rule would permit a title insurer to provide survey coverage to an insured using any of the following: (1) a prior survey and owner's affidavit; (2) a GIS map; or, (3) a new survey. Most title insurance underwriters require a survey when permitting title insurance agents to issue certain title insurance policy forms, such as the Homeowner's Policy of Title Insurance or Expanded Owner's Title Insurance Policy. Under the draft proposed rule, title agents would be allowed to circumvent reasonable risk guidance mandated by their respective title insurance underwriters by preparing certain title insurance policies without obtaining a survey or by using a prior survey that may contain obsolete references. The danger in permitting title insurance agents to lower the risk threshold against custom title insurance underwriter guidance outweighs any benefit derived from the draft proposed rule.

1. The first part of the document is a list of names and addresses, including: [Illegible text]

Table with multiple columns and rows, containing various data points. The text is mostly illegible due to low resolution and blurring.

b. The unlimited nature of the survey rule increases title insurance risk.

Under the draft proposed rule, the time period of any prior survey used to permit the title insurer to issue survey coverage is indefinite in duration. This allows surveys more than ten (10) years old to be used in conjunction with an owner's affidavit to remove the standard survey exceptions from the title insurance policy. With the rapid expanse of residential real estate development across Ohio in the last twenty (20) years, a limitation on the effectiveness of a survey is necessary. Our members recommend that a time limitation be placed on the prior survey rule under (C)(1) stating that the prior owner survey must be no older than ninety (90) days from the date of the current real estate transaction.

c. GIS maps are inaccurate and unreliable as a substitute for verified surveys.

According to the Ohio State Board of Registration for Professional Engineers and Surveyors, a GIS map is not based upon surveyed property lines and does not contain information regarding easements, building lines and other zoning restrictions. These items make up the predominant feature of claims related to survey issues. Accordingly, a GIS map would not provide a title insurance agent with a reliable source of data to issue survey coverage. The Trustees oppose any provision permitting a GIS map to be used in place of a properly verified survey.

2. 3901-7-06 Inducements to Title Insurance.

a. O.R.C. § 3953.26 requires no additional interpretation.

O.R.C. § 3953.26 continues to be the authority on kickbacks and illegal referral fees in Ohio. The Trustees believe that current law prohibits title agents and title underwriters from paying or giving, directly or indirectly, any commission or any valuable thing in exchange for title insurance business. The word "any" means what it says. Therefore, the Trustees do not believe that the statute requires any additional interpretation. If a title agent pays any thing of value to a third party in exchange for the referral of title insurance business, they are in violation of O.R.C. § 3953.26 and the ODI has the power to enforce that law through its administrative authority under O.R.C. § 3905.14.

b. Draft Proposed 3901-7-06 Conflicts with OAC 3901-7-04.

In January of 2007, the ODI promulgated OAC 3901-7-04 which sought to establish ownership and licensing standards for title insurance agencies and agents in accordance with O.R.C. § 3953.21(B). The effect of the rule was to permit those persons prohibited from being agents of title insurance companies to own financial interests in title agencies. Affiliated business arrangements ("AfbAs") are joint ventures in which title agents or title agencies agree to set up a separate entity in order to share a portion of

3 Letter to Director Mary Jo Hudson
July 31, 2008

their profits with their referral partners -- banks, mortgage brokers, realtors and builders. Under OAC 3901-7-04, AfBAs are permissible so long as they meet a nine-part test modeled after HUD's Real Estate Settlement Procedures Act ("RESPA") codified at 12 U.S.C. § 2607 and other requirements under the safe harbor provisions of the act.

In an AfBA, profits of the title agency are distributed amongst the members according to their alleged ownership interests. Under the draft proposed rule, a "valuable thing" is defined to include, "...stock dividends or other distributions of profit"

Therefore, under the draft proposed rule, it would be impermissible for a title agent to give a distribution of profit in an AfBA to prohibited persons under O.R.C. § 3953.21(B), but, under OAC 3901-7-04, permissible for those same prohibited persons to accept a distribution of profit and own a financial interest in the same AfBA. The draft proposed rule favors unlicensed prohibited persons at the expense of those subject to the rule and the licensing issues associated therewith. One is left to wonder whether the ODI is promoting prohibited persons as quasi-title insurance agents and allowing them to have more access to the title insurance industry instead of less. The Trustees of OAITA urge the ODI to reconsider its previous position on AfBAs and adopt a rule that would apply O.R.C. § 3953.26 prohibitions to AfBAs and joint ventures.

On behalf of the members of OAITA, we oppose both draft proposed rules 3901-7-05 and 3901-7-06.

Yours truly,



Steve Squeo, Trustee & Member



Kim Himmel, Trustee & Member



Angelo Russo, Esq., Trustee & Member

Cc: Robert B. Holman, Esq.
Robert Myers, Esq., Trustee
Douglas A. King, Esq., Trustee
Steven C. Hombach, Esq.
Guy Ford