

To: John A. Lartz, Deputy Director, Division of Financial Institutes, Illinois Department of Financial and Professional Regulation

From: Henry L. Shulruff, Senior Vice President - Business Development, Attorneys' Title Guaranty Fund, Inc.

Sent: Thursday, June 7, 2018 3:20 PM

Subject: DS-1 Disclosure

Thank you for sharing your most recent draft. We believe the department has made significant progress.

We still have some concerns about the disclosure. We offer these comments and questions for your consideration and guidance:

1. In many cases, the agent issues the policy. The disclosure does not recognize that fact. We suggest that the language under Disclosure of Associated Business be modified to read "Title Insurance Company insuring the transaction will be _____"

2. In "Estimated Charges," the disclosure requests an "Estimated Title Agent Fee." While Title Agent Fee is not a defined term, it will be difficult to accurately determine how to calculate that "fee." For example, ATG charges its agents for searches if they use our search department. That fee is deducted from the agents' retained premium. Should the search fee be deducted from this calculation to get to the net retained premium? In those cases, where an agent buys the search from a third party, should they deduct that fee from the Title Agent Fee to get to the net retained premium? Additionally, I have previously asked whether you believe this fee should include services for escrow fees in those cases where the agent also conducts the closing. In absence of any further clarification and authority, we will assume that is considered an escrow fee rather than a title agent fee. Perhaps it could refer to "Agents Net Retained Premium."

3. In order to avoid confusion, we suggest that in the next section, the estimate refer to "non-title related fees."

4. The form asks that the disclosing party "(choose only the one applicable fee)". It is often the case that a real estate brokerage refers the customer to an attorney that is an agent for the brokerage owned captive. In that case, should the non-title related fee be the attorneys' fee or the brokerage commission?

5. Bigger picture, we believe that the estimate of any non-title related fees on this form is unnecessary, will complicate the process and is beyond the scope of the department's authority. This is particularly true of attorneys' fees, something that is within the sole province of the Illinois Supreme Court.

Further, it is unnecessary to disclose the attorney's fees on the form because an attorney already has an ethical obligation to disclose his or her fees or hourly rate to the client. Therefore, adding this information to the form does not provide the consumer with information it does not already have. The amount of the attorney's fees to be charged is based on an agreement, often an

engagement letter, between the attorney and the client, which agreement should remain private, unless the attorney is required to disclose his fees to a court or the client grants permission to disclose the information. Since the form will be disclosed to other parties, this private information between attorney and client will be disclosed to the public.

Further, attorney's fees may vary widely from one transaction to the next. Therefore, third parties who may be reviewing the information will get an inaccurate picture of the fees being charged. The reasons for the variances can be because some transactions are more complex than others, some clients may receive discounts for various reasons and sometimes, fees may be bundled together with other services that are being provided to the client, making it difficult to carve out the fees solely related to the closing or the representation in the particular real estate transaction.

Even if the department had authority to compel disclosure of legal fees, an estimate may be impossible to provide at this stage of the transaction. By requiring the lawyer to estimate an unknown fee at the beginning of the transaction, this disclosure will likely cause confusion and disruption in the process, in those cases where unforeseen circumstances arise which require a change in the fee structure.

Further, Section 18(b) requires an estimate of those charges "to be paid as described in Section 19". Section 19 clearly identifies the fees that are subject to disclosure. None of the fees contained in this section of the disclosure are included in that section and therefore, requiring disclosure of those fees is beyond the authority of the department.

Thank you for your consideration on these important issues. As we have stressed in the past, targeted enforcement actions against bad actors will go a long way towards curbing abuses. We hope the department can establish protocols that are mindful of the protection of consumers, ensures consumers' access to legal counsel, and recognizes that most parties in the title insurance business in Illinois are honest and working in the best interest of their clients and customers.