



### **UNDERWRITING ALERT**

**To:** All Florida Agents of WFG National Title Insurance Company

**From:** WFG Florida Underwriting Department

**Date:** October 7, 2013

**Bulletin No.:** FL 2013-12

**Re:** Florida Rules on Marketing Practices

Last week, you received a National Bulletin on Marketing Practices, which contained a very clear statement of WFG's policy.

WFG does not authorize any agent to conduct marketing activities on behalf of WFG and does not condone or in any way authorize any agent to violate state or federal anti-inducement laws, rules or regulations.

WFG works hard to maintain the highest ethical standards and strict compliance with state and federal laws, we expect no less of our agents. But especially when we start looking at the various anti-inducement laws, the boundaries between legitimate marketing and unlawful inducements can be substantially less clear than any of us would like.

The pertinent parts of the Florida Statute §626.9541(1)(h)3 read:

- 3.a. No title insurer, or any member, employee, attorney, agent, or agency thereof, shall pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as inducement to title insurance, or after such insurance has been effected, any rebate or abatement of the premium or any other charge or fee, or provide any special favor or advantage, or any monetary consideration or inducement whatever.
- b. Nothing in this subparagraph shall be construed as ... prohibiting the payment of earned portions of the premium to duly appointed agents or agencies who actually perform services for the title insurer. Nothing in this subparagraph shall be construed as prohibiting a rebate or abatement of ... that portion of the premium that is not required to be retained by the insurer pursuant to s. [627.782](#)(1), or any other agent charge or fee to the person responsible for paying the premium, charge, or fee.
- c. No insured named in a policy, or any other person directly or indirectly connected with the transaction involving the issuance of such policy, including, but not limited to, any mortgage broker, real estate broker, builder, or attorney, any employee, agent, agency, or representative thereof, or any other person whatsoever, shall knowingly receive or accept, directly or indirectly, any rebate or abatement of any portion of the title insurance premium or of any other charge or fee or any monetary consideration or inducement whatsoever, except as set forth in sub-subparagraph b.; provided, in no event shall any portion of the attorney fee, any portion of the premium that is not required to be retained by the insurer pursuant to s. [627.782](#)(1), any agent charge or fee, or any other monetary consideration or inducement be paid directly or indirectly for the referral of title insurance business.

The one clear exception to this set of prohibitions is provided in (m)

(m) *Advertising gifts permitted.*—No provision of paragraph (f), paragraph (g), or paragraph (h) shall be deemed to prohibit a licensed insurer or its agent from giving to insureds, prospective insureds, and others, for the purpose of advertising, any article of merchandise having a value of not more than \$25.

The Florida Department of Financial Services (DFS) does enforce these statutes and the penalties can be steep. So great caution is merited as you design your marketing plans.

Over the years, DFS has provided some guidance on the subject. In 2003, DFS issued an informational bulletin on the subject [OIR-03-001](#), which WFG has been advised still forms the basis for DFS enforcement actions.

During 2010, recognizing that even the most ethical title agents were having trouble distinguishing between “permitted marketing” and “illegal inducements,” DFS began working closely with the Florida Land Title Association (If you are not a member, you probably should be!) to develop a rule clarifying these boundaries. Substantial effort was devoted to drafting a proposed rule, but toward the end of 2010, partly as a result of the impending change in elected leadership, the project was shelved. Even though the draft rule was not formally adopted, it is an interpretation of existing statutes that are applicable to the title industry. As such, the draft rule provides some interesting insights into the thinking and approaches of the Department to enforcing these issues.

A copy of the December 1, 2010 (near final) draft is [here](#).

The perception of rulemaking by our elected officials has evolved since 2010, and WFG recently urged our friends at DFS to reopen this important project. We were positively received and expect to actively participate in the development of clearer guidelines on unlawful inducements.

To summarize:

- Florida’s anti-inducement rule applies to all types of properties, all types of parties, all types of insurance, and all potential uses of the property.
- The prohibited types of inducements are very broad, applying to “any monetary consideration or inducement whatever” except for marketing and promotional materials having a value under \$25.00.
- Limited guidance is available in a DFS [bulletin](#) and in a [draft rule](#).
- DFS is actively enforcing these laws and significant penalties are being assessed. Copies of their enforcement actions can be reviewed on [the DFS website](#)

The issues and boundaries of unlawful inducements are still less clear than we would like. WFG underwriters are available to discuss these issues with our agents, but given the lack of clarity of the underlying rules, the answer may well be “we don’t know either.”

In the meantime, WFG will be actively working with Florida’s Department of Financial Services in hopes of providing clearer guidance on the boundaries of Unlawful Inducements.

**NOTE: This Bulletin should not be interpreted as reflecting negatively upon the character of an individual or entity and is for the sole purpose of establishing underwriting positions reflecting WFG National Title Insurance Company's best business judgment. The information contained in this Bulletin is intended solely for the use of employees of WFG National Title Insurance Company and its agents. Disclosures to any party not described above are prohibited unless approved in writing by the WFG National Title Insurance Company's Underwriting Department.**



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