



To: All Virginia Policy Issuing Agents of WFG National Title Insurance Company  
From: WFG Underwriting Department  
Date: June 22, 2021  
Bulletin No.: VA 2021-02  
Subject: Virginia Bureau of Insurance Bulletin on Discounting Settlement Fees

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As a follow-up to its January 4, 2017, informational letter on rebating by settlement agents, the Virginia Bureau of Insurance (“BOI”) issued its June 3, 2021, letter clarifying certain practices that may be violations of the prohibition against “rebating” certain fees. The BOI reiterated its position that a reduced or discounted fee for settlement services is a “thing of value” as defined in various sections of the Code of Virginia and *may be* a violation of anti-kickback statutes.

In the 2021 letter, the BOI emphasized that offering a discounted settlement fee in exchange for the referral of title insurance business or as an inducement for the purchase of a title insurance policy may be considered an impermissible rebate. The fee modification need not be expressly or directly conditioned on the purchase of title policy but may be an indirect inducement, considering the frequency with which policies are purchased during real estate transactions. Discounted settlement fees are not *per se* violations, but the Board will investigate suspected impermissible rebates.

Agents should maintain detailed records in order to respond to inquiries by the BOI. Among the records suggested by the BOI are promotional materials, communications regarding fee reductions, and/or documentation of any such discount.

Please note that at this time we do not have any bright-line guidance or examples of what the BOI would consider permissible or impermissible. The trigger *seems to be* if the discount is offered in exchange for the *referral* of business. For example, and purely as an example, we believe that if an agent were to advertise in a paper or trade publication a discount for, say, first responders, that would likely result in a determination of not a violation. However, if that agent were to make it known to realtors or lenders in a position to refer their clients to the agent, we speculate that would result in a contrary result.

**Agents who have questions or concerns about their practices in this regard are urged to discuss the matter with the agent’s corporate counsel.**

Copies of both the [2017](#) and the [2021](#) letters are attached to this bulletin.

*Information Bulletins are designed to provide our agents with information we think will help in managing their business or just being better title professionals, but which does not rise to the level of being an underwriting mandate and are not within the scope of the agency agreement.*