

COMMONWEALTH OF VIRGINIA

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TO: All Licensed Title Insurance Agents, Agencies, and Companies who are Registered Settlement Agents ("Title Settlement Agents")

**RE: Prohibition Against Rebating
Electronic Recording**

The Bureau of Insurance ("Bureau") has received inquiries regarding the permissibility of offering or giving free home warranties or other things of value in exchange for settlement services, as well as the permissibility of utilizing a third-party vendor for the electronic recordation of settlement documents. The Bureau offers the following guidance on these matters.

Rebating

Virginia law prohibits the practice of rebating, which occurs when an insurer or agent offers an inducement to purchase an insurance policy that is not specified in the policy or included in its rating plan. It has come to the attention of the Bureau that certain title settlement agents are offering and giving a free home warranty, free home inspection, or other thing of value to consumers in exchange for the purchase of real estate settlement services. These things of value offered or given by the title settlement agent are not expressly conditioned on the purchase of a title insurance policy by the consumer; however, in nearly all transactions, title insurance is purchased. It is the opinion of the Bureau that these practices constitute impermissible rebating and are prohibited by § 38.2-509 A 2 of the Code of Virginia ("Code").

Section 38.2-509 A 2 of the Code prohibits any person from paying or giving, directly or indirectly, as inducement to any insurance contract, any valuable consideration or inducement not specified in the contract. The Bureau has held the longstanding position that a violation of § 38.2-509 of the Code occurs when an agent, agency or company offers or gives direct consideration or inducement to a consumer to purchase a contract of insurance.¹ The prohibition, however, is not limited to direct consideration or inducement.

¹ Bureau Administrative Letter 1992-6.

A home warranty and a home inspection are each valuable consideration.² The fact that the title settlement agent does not expressly condition the receipt of the home warranty, home inspection, or other thing of value by the consumer upon the purchase of title insurance does not change the purpose of the act. It is rare for a consumer to purchase settlement services from one title settlement agent and to purchase title insurance from another title settlement agent. The indirect offering or giving of free home warranties, free home inspections, and other things of value to a consumer by a title settlement agent is an inducement for the purchase of title insurance and is prohibited by § 38.2-509 of the Code.

Electronic Recording

A newer method of recording documents has emerged called electronic recording or "e-recording". Electronic recording enables a title settlement agent to submit documents for recordation via a computer, and have the documents reviewed, recorded, and returned back to the title settlement agent electronically. The Bureau has received inquiries regarding whether Virginia law permits a title settlement agent to utilize a third-party vendor for the electronic recordation of settlement documents. It is permissible to use a third-party vendor to electronically record settlement documents; however, the title settlement agent must structure these arrangements in such a way that the settlement agent remains compliant with all escrow and recording requirements.

For example, a title settlement agent should not permit any third party to debit the settlement agent's main escrow account for recording fees. This would be a violation of § 55-525.24 of the Code, which requires that all funds deposited with a settlement agent in connection with an escrow, settlement, or closing be handled in a fiduciary capacity. A title settlement agent who wishes to allow a third party to debit an escrow account for recording fees should establish a separate escrow account for Virginia-only recording funds. An alternative to establishing an additional Virginia-only recording escrow account would be for the title settlement agent to pay the third-party electronic recorder via an escrow check, so that there is no escrow account debit by the third party. Be advised that any time a title settlement agent uses a third-party vendor to record, the title settlement agent remains responsible for recordation of the deed, the deed of trust, or mortgage, or other documents and disbursement of settlement proceeds within two business days of settlement.

Questions concerning this informational letter should be directed to:

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² The average cost of a home warranty currently meets or exceeds the average settlement fee charged by title settlement agents.