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BULLETIN NO. 10-10

TO: ALL LICENSED NEW JERSEY TITLE INSURERS AND TITLE INSURANCE PRODUCERS

FROM: THOMAS B. CONSIDINE, COMMISSIONER

RE: APPLICABILITY OF N.J.S.A. 17:16G-1, ET SEQ. TO LICENSED TITLE INSURANCE PRODUCERS ACTING AS SETTLEMENT AGENTS IN "SHORT SALE" REAL ESTATE TRANSACTIONS

The Department of Banking and Insurance ("Department") has become aware that uncertainty exists amongst licensed title insurance producers regarding whether they are required to be licensed as a debt adjuster pursuant to N.J.S.A. 17:16G-1, et seq. ("the Act") when they engage in certain activity related to the settlement or closing of a "short sale" real estate transaction. For the purposes of this bulletin, a "short sale" refers to a transaction in which the selling price is less than the total sum of the liens of record against the property being sold and in which a mortgagee or other lien holder agrees to release their lien in return for a payment of less than the full amount owed by the seller upon the closing of the sale.

The issue arises when, in the course of rendering title insurance services to a buyer pursuant to a commitment to provide title insurance, a licensed title insurance producer communicates with the holders of mortgages or other liens on the real property being purchased when the amount owed on such liens exceeds the selling price of the property. In some transactions the mortgagee's or lien holder's agreement to release the lien in return for partial payment of the total amount owed is obtained as the result of such communications from the licensed title insurance producer.

Pursuant to N.J.S.A. 17:16G-2, only a non-profit social services agency or a non-profit consumer credit counseling agency shall act as a debt adjuster and it is unlawful for any such agency to do so without being licensed as a debt adjuster pursuant. N.J.S.A. 17:16G-1c(1) defines the term "Debt adjuster" as: "a person who either (a) acts or offers to act for a consideration as an intermediary between a debtor and his creditors for the purpose of settling, compounding, or otherwise altering the terms of payment of any debts of the debtor, or (b) who, to that end, receives money or other property from the debtor, or on behalf of the debtor, for payment to, or distribution among, the creditors of the debtor."

The Department does not construe this definition as applicable to the communications between licensed title insurance producers operating in short sale transactions and the holders of liens of record against the property, the title to which is to be insured, where the following factors are present:

1. The licensed title insurance producer is attempting to obtain the release of prior liens and encumbrances to ensure that title objections found in the title commitment are properly disposed of and removed, so as to enable the owner to convey marketable and insurable title and the buyer to receive a title free from such defects and liens and insurable by a title insurance policy issued by the title insurance producer's underwriter; and

2. The title insurance producer receives no consideration for engaging in such activity, other than payment for the producer's role in the sale of the title insurance to go into effect upon the consummation of the short sale transaction and of those charges outlined under the New Jersey Land Title Insurance Rating Bureau's Manual of Rates and Charges, Sections 6.1 and 7.1, as approved by the Commissioner of Banking and Insurance.

When acting as settlement agents on real estate closings, the activities of title insurance agencies also typically include the receipt of funds on behalf of the seller and the payment of such funds to creditors of the seller in order to remove liens on the real property being conveyed at the closing. The engaging in such activity in short sale transactions by title insurance producers who are not debt adjuster licensees or by unlicensed employees of business entities licensed as title insurance producers who are not licensed as debt adjusters will also not be construed by the Department as in violation of the Act.

Licensed title insurance producers who otherwise engage in activity within the statutory definition of "debt adjuster" without being licensed as such pursuant to the Act are subject to penalties as provided for in N.J.S.A. 17:16G-8.

Firms licensed as title insurance producers are urged to disseminate this bulletin to all individual producers licensed with them.

May 18, 2010
Date



Thomas B. Considine
Commissioner