ODI
Ohio Department of Insurance
John R. Kasich, Governor
Jillian Froment, Director

50 West Town Street
Third Floor – Suite 300
Columbus, OH 43215-4186
(614) 644-2658
www.insurance.ohio.gov

Prohibition On Rebates And Inducements
Frequently Asked Questions (FAQs)

Can a title company or agent pay a referral fee to someone for referring business?

In limited circumstances a referral fee may be paid. Any referral fee paid must comply with R.C. **3933.01**, **3953.26** and **3905.18**.

Does R.C. 3953.26 apply to commercial title transactions?

Yes. **R.C. 3953.26** applies to both residential and commercial title transactions.

Are title companies and agents permitted to give out promotional or advertising items?

Ohio law prohibits the giving of something of value as an inducement to purchase title insurance. The Superintendent has determined that a promotional or advertising item or meal with a fair market value of fifty dollars or less to any one person per calendar year is not valuable consideration when the item or meal **IS NOT** tied to the purchase of an insurance policy. Additionally, the fifty dollar per person allotment may not be aggregated or combined to support any one event, occasion, gathering, etc. See **Bulletins 95-3** and **2009-13** for further information.

Are there any circumstances in which a title company or agent may spend more than $50 on a customer or prospective customer in a given year?

No.

If a title company or agent decides it would be beneficial to give out promotional or advertising items, are there any record keeping requirements that must be met?

Yes. Title insurance companies and agents who give goods or services of nominal value for promotional or advertising purposes are required to keep records of such transactions. The records should clearly indicate the person to whom the goods are given or the services provided, the date, and the fair market value of the item or service.

Undocumented transactions or transactions which exceed nominal value will be considered acts of inducement or compensation in violation of R.C. 3933.01 and 3953.26. See **Bulletin 95-3** for further information.

Can title companies and agents establish different fees for different types of transactions (i.e. commercial, residential, refinance, etc.)?

Yes.

Can title companies and agents, on a transaction-by-transaction basis, vary from their fees in order to get business?

No. **R.C. 3953.26** specifically states a title insurance company or agent cannot give any person, either directly or indirectly, any commission or any part of its fees or charges, or any other consideration or valuable thing, as an inducement for, or as compensation for, any title insurance business.

Can a title company or agent share their commissions with an attorney who may be involved with a real estate transaction?

Pursuant to **R.C. 3905.18**, an insurer or an agent is not permitted to pay a commission, service fee, brokerage fee, or any other type of consideration to a person for selling, soliciting or negotiating insurance if that person is not a licensed agent. An attorney may be paid a commission as long as they are licensed as an agent for the same line of authority. If an attorney is not licensed as a title insurance agent, they can only receive payment of a fee for services rendered. See **R.C.3953.26** for further information.

Can title insurance agents share commissions?

R.C.3953.27 allows for the division of fees and charges between or among one or more title insurance agents, provided such division of fees and charges does not constitute an unlawful rebate or is not in payment of a forwarding fee or finder's fee.

Can a bank, lending institution, mortgage broker, mortgage service, real estate company, builder, developer, or any individual so engaged, act as an agent for a title insurance company?

No. **R.C. 3953.21** prohibits the above entities, their subsidiaries, or individuals so engaged, from acting as an agent for a title insurer. **O.A.C. 3901-7-04** includes builders and developers in this prohibition.

Can one of the above prohibited entities own or have ownership interest in a title agency? (Commonly referred to in the title industry as an affiliated business arrangement ("ABA")).

Yes. However, a title agency cannot be controlled by one of the prohibited entities. Control is presumed to exist with ownership interest of 50% or more. Additionally, a title agency may not obtain a license or remain licensed if the entity it is merely a sham arrangement used as a conduit for inducements or compensation for business payments. See **O.A.C.3901-7-04**.

Is there a limit as to how many minority partners an ABA can have?

No. An ABA can have an unlimited number of minority partners, however, the minority partners cannot have more than a combined 49.9% ownership of the business. See **O.A.C. 3901-7-04**.

Can a title agency set up an ABA where ownership interest is based on referred business? Can the title agency re-evaluate and restructure the ownership interest based on referred business?

No. In accordance with **O.A.C. 3901-7-04,** a return on ownership interest cannot be a payment which is based upon the amount of actual, estimated or anticipated referrals.

NOTE: In accordance with **O.A.C. 3901-5-09**, if there is a change in ownership or in the ownership of any business entity holding an ownership interest in the title agency, the title agency, within thirty days of the change being made, must notify the Department, and provide an organizational chart that shows all owners and their percentages of ownership.

What potential sanctions could an agent face if they violate an Ohio insurance law or rule?

In accordance with **R.C. 3905.14**, the Superintendent of Insurance can suspend, revoke or refuse to issue or renew the license of an insurance agent, assess a civil penalty, or impose any other sanction if evidence supports that an agent violated an insurance law or rule.