

ILLINOIS REAL ESTATE LAWYERS ASSOCIATION, INC.

1701 East Woodfield Road, Suite 910
Schaumburg, Illinois 60173

September 2, 2016

Re: Senate Bill 2688

Dear Chairperson Martinez, Senator Connelly, and Committee Members:

The Illinois Real Estate Lawyers Association (IRELA) is a growing, independent, proactive bar association representing the interests of Illinois real estate practitioners and of the consuming public. IRELA has over 2,500 members statewide. I have served since 2007 as President of IRELA.

The Nature of the Problem.

On an almost weekly basis, IRELA receives calls from real estate practitioners who are facing the difficult choice of whether or not to accede to the demands of a captive title insurance company in order to maintain a source of referrals. "Just send all your title business our way", they are essentially told, "and you won't have your source of real estate referrals suddenly dry up". Illinois real estate practitioners are often solo practitioners or attorneys in small to medium size firms. They need the real estate transactional work. They seek guidance; they seek a way out of their dilemma.

Consumers involved in a real estate sale transaction are usually dealing with the largest, most complicated financial transaction of their lives, and they are increasingly having the wool pulled over their eyes while being forced to pay higher prices for title insurance coverage due to anti-competitive kickback arrangements.

Title insurance companies affiliated with real estate brokerage operations ("captive title insurance companies") are dramatically increasing the fees they are charging consumers in order to be able to pay higher enticements to real estate practitioners to join their proprietary "Attorney-Agent" programs. Participating attorneys who join these programs then are expected to send all their title work to the captive title insurance company, or risk suffering the consequences.

This House of Cards Cannot Stand.

Charges relating to title insurance in the Greater Chicago Metropolitan Area are already exceeding record highs. Many captive title insurance companies affiliated with real estate brokerage operations are playing a "shell" game and charging consumers higher and higher unexplained fees in order to be able to pay the higher enticements. The industry cannot support unchecked practices of this sort, and, without legislative solutions such as SB2688, this type of spiraling situation will soon implode, resulting in significant harm to the industry and to the consuming public.



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Neither ISBA Ethics Opinion 10-02 nor RESPA is enough:

Many younger, hungrier attorneys decide to “play along” with these improper proposals even though they violate ISBA Ethics Opinion 10-02 by compromising an attorney's independent judgment on behalf of clients. Even older attorneys with more established practices feel the pressure. While ISBA Ethics Opinion 10-02 clearly identifies the problem and provides unequivocal direction for practitioners, it is only an ethics opinion and is not enough by itself. The economic pressures are too strong.

Moreover, while Section 8 of the Real Estate Settlement Procedures Act (“RESPA”) prohibits the giving of kickbacks or things of value in exchange for referrals in this type of situation, and RESPA is adopted by reference in the Illinois Title Insurance Act, no clear enforcement mechanism has yet been employed to curb these practices in this context.

Why we are here:

We are here because supporting this type of initiative is integral to IRELA's purpose and mandate. The ISBA Real Estate Law Section Council on which I have served for several years has voted to support this legislation.

Existing Regulatory Oversight Needs to be Supplemented.

Significantly, the Form DS-1 Controlled Business Arrangement Disclosure which IDFP already oversees is designed to provide a means for members of the consuming public to be informed regarding the estimated fees for title insurance to be issued by an entity in which the producer of title insurance or an agent has a financial interest. The same principles of transparency and consumer protection that drove the development and implementation of the Form DS-1 apply here. The Form DS-1, however, does not require the producer or agent to disclose whether or not a thing of value such as continued referrals has been or will be received in connection with the title order being placed, and so SB2688 is an important first step in correcting this situation.

SB2688 will help curb dangerous abuses in the title insurance industry. It will increase transparency and help protect consumers.

Very truly yours,

Ralph J. Schumann

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