



Call for Comment: Title insurance practices

The Law Society's Advertising and Fee Arrangements Issues Working Group is examining practices involving the payment of fees and offering of benefits by title insurers to real estate lawyers or their staff and is considering whether additional regulatory measures involving these practices are required.

The Working Group would like to hear from real estate lawyers and other stakeholders with respect to the following questions:

- How are Rules 3.2-9.4 to Rule 3.2-9.7 operating in practice? Are parts of these rules difficult to interpret or practically apply? Do they reflect the realities of real estate practice?
- Do you routinely recommend a particular title insurer? If so, why?
- Are you aware of fees being offered by title insurers for services?
 - For what services are fees being offered?
 - How much are the fees / what is the range of the fee per transaction?
 - If you accept fees what is the process for disclosing them to your client? What do you do with the fees? Does the fee affect the amount charged to your client?
 - If you do not accept the fee, why do you decline it?
- Are you aware of benefits being offered by title insurers for arranging title insurance policies?
 - What benefits are offered (e.g. discounts for volume of policies issued, gifts, referral payments, incentives to staff including gift cards and contest opportunities, waiver of deductibles or insurance levies on errors and omission claims etc.)?
 - How much is the benefit / what is the range of the benefit per transaction?
 - If you accept such benefits, what is the process for disclosing them to your client? What do you do with the benefit? Does the benefit affect the amount charged to your client?
 - If you do not accept such benefits, why do you decline them?
- Do you think that the existing disclosure requirements should be enhanced? If so, how?

- Do you think clients should consent in writing to payment of a fee or conferral of benefits to their lawyers by title insurers? How would this work in practice?
- What do you think about banning the acceptance of fees and benefits from title insurers? How would this work in practice? What would the effect of a ban be?
- Are you aware that legal services coverage offered by some title insurance policies benefit the lawyer by waiving deductibles and insurance levies? If so, do you explain the potential benefits to the client and/or to the client?

Comments may be submitted by October 31, 2018 at:

www.iso.ca/advertising-fee-arrangements

Submissions will be provided to the Working Group. They may also be provided to the Law Society's Professional Regulation Committee and Convocation, and may be reproduced, and/or made publicly available by the Law Society with attribution. The Law Society reserves the right to redact submissions at its discretion, for reasons including the protection of confidentiality, copyright, and brevity.

Background

The Law Society has taken the view since at least the late 1990s that the lawyer is not prohibited from accepting fees from a title insurer for services actually rendered to the title insurer. However, the lawyer must disclose such fees and relationship to all clients in the retainer.

The Working Group has heard that the practice of some lawyers has been to receive fees from title insurers without disclosing the fee to the client. It has also heard reports of benefits and incentives, such as contest opportunities, volume discounts and gift cards, offered to lawyers and their staff by certain title insurers.

It is considering whether by-law and rule amendments may help ensure that title insurance practices are transparent and in the public interest.

For additional background information see www.iso.ca/advertising-fee-arrangements.