

REBATING WEBINAR

Prohibition of Rebates, Discounts, and Inducements in Title Insurance

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CONTENT

- What is Rebating?
- Maryland's Anti-Rebating Laws that pertain to Title Insurance
- Purpose of Rebating Laws in the Title Insurance industry
- What are the Key Phrases?
- What Activity is Permissible?
- Questions



WHAT IS REBATING?

- The practice of offering, paying, or giving something of value that is not provided for in the policy as an inducement to purchase an insurance policy, before or after insurance has become effective.
- It can include:
 - Refunding a portion of the premium or the producer's commission on the premium to the insured.
 - Discounts of premium stated in the policy.
 - Paying, allowing, giving or offering to pay, allow or give anything of value to an insured or applicant as an inducement to purchase insurance from a specific insurer or producer.
 - Incentives, in the form of gifts or other consideration, given to induce consumers to purchase insurance coverage other than educational materials, promotional materials or articles of merchandise with a value of \$50 or less.

TITLE INSURANCE ANTI-REBATING LAWS IN MARYLAND



ANTI-REBATING LAWS RELATING TO TITLE INSURANCE

All Insurance Other than life insurance, health insurance, and annuities

Sections 27–212 (b) and (c) of the Insurance Article provides, in relevant part:

* * *

(b) Except to the extent provided for in an applicable filing with the Commissioner as provided by law, an insurer, employee or representative of an insurer or insurance producer may not pay, allow, give, or offer to pay, allow, or give directly or indirectly as an inducement to insurance or after insurance has become effective:

- 1) a rebate, discount, abatement, credit, or reduction of the premium stated in the policy;
- 2) a special favor or advantage in the dividends or other benefits to accrue on the policy; or
- 3) any valuable consideration or other inducement not specified in the policy.

ANTI-REBATING LAWS RELATING TO TITLE INSURANCE

(c) An insured named in a policy or an employee of the insured may not knowingly receive or accept directly or indirectly a rebate, discount, abatement, credit, reduction of premium, special favor, advantage, valuable consideration, or inducement described in subsection (b) of this section

* * *

(f) This section does not prohibit an insurer from:

- (1) paying commissions or other compensation to licensed insurance producers; or
- (2) allowing or returning to its participating policyholders, members, or subscribers lawful dividends, savings, or unabsorbed premium deposits.

Note: *** indicates omitted text.

ANTI-REBATING LAWS

Title Insurance

Section 11–407 of the Insurance Article provides:

- a) A title insurer may not make or issue a contract, policy, or guarantee of insurance except in accordance with filings approved as provided in this subtitle, except for special or unusual risks for which a filing has not yet been provided.
- b) Each title insurer must hold to the rates or premiums as approved by the Commissioner and may not deviate from the rates or premiums or allow to or for the account of an insured a rebate or discount on the rates or premiums payable.
- c) A title insurer may pay or allow a commission to a licensed insurance producer of the title insurer as compensation for procuring business.

IMPROPER PREMIUMS AND CHARGES

Section 27-216(b) of the Insurance Article provides:

* * *

(b) (1) A person may not willfully collect a premium or charge for insurance that:

(i) exceeds or is less than the premium or charge applicable to that insurance under the applicable classifications and rates as filed with and approved by the Commissioner; or

(ii) if classifications, premiums, or rates are not required by this article to be filed with and approved by the Commissioner, exceeds or is less than the premium or charge specified in the policy and set by the insurer.

Purpose of Anti- Rebating Laws

To ensure that all consumers are
treated fairly.....



REASONS FOR PROHIBITING REBATING

- Anti-Rebating Laws:
 - Prevent the creation of a competitive disadvantage or uneven playing field in the marketplace.
 - Protect consumers from unfair or deceptive practices or discriminatory rates.
 - Provide market stability by prohibiting insurers and producers from directly and indirectly offering inducements to purchase insurance.



WHAT ARE THE KEY PHRASES TO BE AWARE OF?



The anti-rebating statute has two key concepts to be aware of when offering gifts or promotional items in real estate transactions....

1. PAYING, GIVING OR OFFERING ANYTHING OF VALUE.

Such as, but not limited to, the following impermissible items:

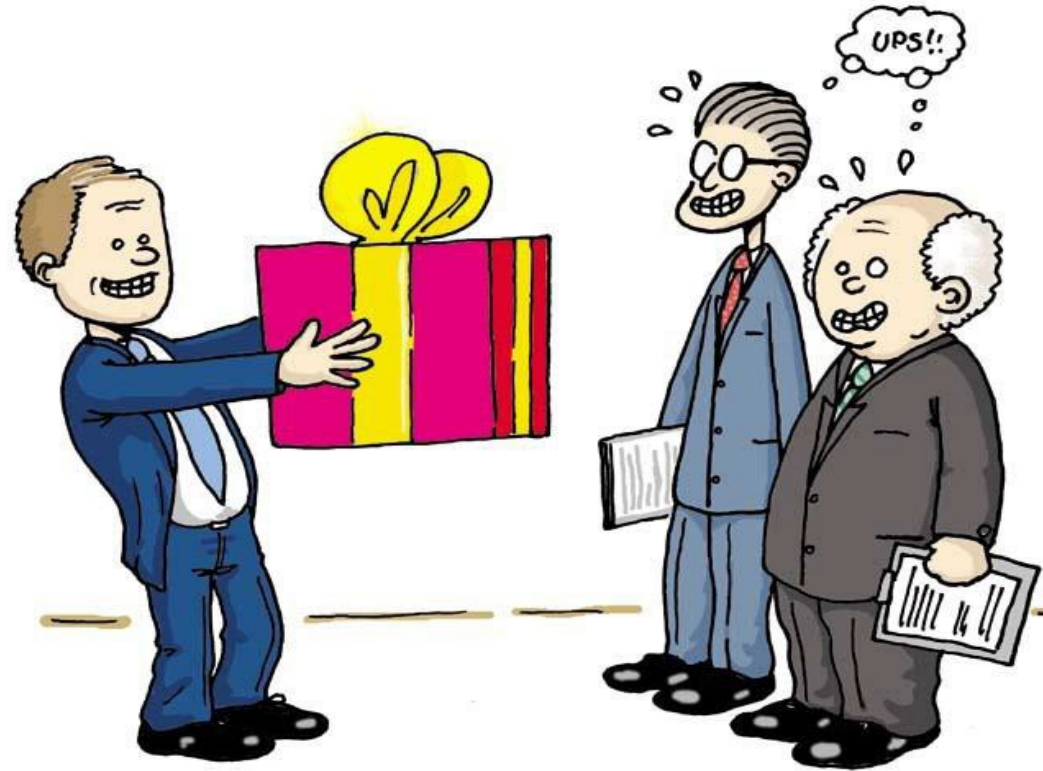
- Free Home Warranties
- Free Home Inspections
- Uber Rides
- Zillow Accounts
- Tax Services
- Legal Services

2. DIRECT OR INDIRECT INDUCEMENTS

Including, but not limited to the following unlawful practices:

- The purchase of insurance is tied or connected to the gift or the rebate and the volume of business generated.
- Side deals that are not included within the terms of the insurance policy and therefore not guaranteed or available to all consumers.
- The rebate or gift is directly or indirectly contingent on the sale or purchase of title insurance.

WHAT ACTIVITIES ARE PERMISSIBLE?



EXCEPTION TO THE ANTI-REBATING LAW

Section 27-212(d) of the Insurance Article provides:

* * *

(d) (1) Except as otherwise provided by law, a person may not knowingly offer, promise, or give any valuable consideration not specified in the policy, except for educational materials, promotional materials, or articles of merchandise that cost no more than \$50.

- Offering or giving away educational materials, promotional materials, or articles of merchandise that **cost no more than \$50.00**, regardless of whether a policy is purchased, is permitted.

PROMOTIONAL ITEMS

- Promotional items are a form of advertising, which is an attempt to influence consumers to purchase insurance from the producer.
- Anti-rebating laws do not prohibit insurance carriers or producers from advertising products and services or offering promotional items or gifts whose value is \$50 or less to consumers.
- However,
 - The promotional items cannot be connected to the purchase of insurance or an inducement to purchase insurance.
 - The promotional items must be offered to a consumer whether or not the consumer purchases a policy.
- Permissible promotional items, include, but not limited to:
 - Mugs
 - Pens
 - Calendars
 - Gift cards

REDUCED OR DISCOUNTED SETTLEMENT FEES

- The Maryland Insurance Administration (“MIA”) does not regulate settlement fees.

Except if :

- the settlement fees are contingent upon the purchase of insurance.
- the discounted settlement fees should not create an obligation for the consumer to purchase insurance.
- the reduced or discounted settlement fees should be offered to a consumer whether or not the consumer purchases a policy.

POTENTIAL CONSEQUENCES FOR VIOLATING REBATING LAWS

- Whether a given activity violates Maryland's anti-rebating statute is fact-specific and will depend upon the circumstances.
- MIA may conduct an investigation that may result in the initiation of the appropriate administrative action.
- For producers and applicants for a producer's license, administrative action may include the following:
 - denial, suspension or revocation of license;
 - an administrative penalty – not less than \$100 but not exceeding \$5,000 for each violation of the Insurance Article;
and/or
 - restitution to any consumer financially harmed by the activity. (See § 10-126 of the Insurance Article)

HOW TO REPORT POTENTIAL VIOLATIONS?

- Send inquiries or concerns regarding this webinar or other title related issues to: enforcement.mia@maryland.gov
- Submit complaints online or by mail to the Maryland Insurance Administration, 200 St. Paul Place, Suite 2700, Baltimore, MD 21202
- Call 1-800-492-6116 or 410-468-2384
- Visit website at www.insurance.maryland.gov

RESOURCES

- MIA Bulletin No. 17-16, “Prohibitions of Rebates, Discounts and Inducements”.
- § 14-127, Real Property Article, Annotated Code of Maryland
- The Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. § 2601 et. seq.)
- The Consumer Financial Protection Bureau (CFPB) (<https://www.consumerfinance.gov>)
- TILA-RESPA Integrated Disclosure Rule (TRID) (12 C.F.R. Parts 1024 and 1026)
- Maryland Insurance Administration’s “Consumer Guide to Title Insurance”

REMINDERS



- **DO NOT:**

- Give or offer anything of value to directly or indirectly induce the purchase of insurance.
- Offer or give anything tied to the purchase of insurance.
- Do not offer reduced settlement fees contingent upon the purchase of insurance.
- **Note:** Not conditioning home warranties or inspections on the purchase of title insurance, offering the warranties and inspections to all consumers, and not increasing settlement fees, is still unlawful rebating and not permitted.

- **DO:**

- Continue to provide consumers with optimal customer service and superior products.
- Provide consumers a fair and equitable market place.
- Limit the value of educational, marketing or promotional items not exceeding \$50.

QUESTIONS



*Please note this information does not substitute for legal advice. Please consult with your attorney.

The following questions were submitted previously, please see responses below:

- **Question:** Have any changes been made to the regulations affiliated business arrangement (“ABAs”)?
 - **Answer:** The MIA does not regulate ABAs.
- **Question:** Is a courtesy credit allowable for repeat customers?
 - **Answer:** Yes, as stated during the webinar in slide number 16, producers may offer reduced or discounted settlement fees. Such practices would not be viewed as a rebate as long as the credit does not change the premium or other filed rates.
- **Question:** A title producer receives a communication from a consumer stating that the settlement fee of another title producer is \$250 less and, if the title producer will match the other title producer’s settlement fee the consumer will settle with the title producer. The title producer matches the other title producer’s settlement fee, and this discount is given whether or not the consumer purchases title insurance. Does giving this discount violate Maryland law?
 - **Answer:** No, as provided in slide number 16, producers may offer reduced or discounted settlement fees and negotiate fees with consumers without creating an obligation to purchase title insurance. This is not a rebate and would not violate Maryland’s anti-rebating laws. Please keep in mind you may not reduce your commissions as part of the discounted settlement fees.

Questions

- **Question:** A title producer provides the following volume discount to consumers: If a consumer retains the title producer to perform more than 4 settlements per year, the title producer's settlement fee is waived and the title producer performs the settlement charging actual costs only. This discount is given whether or not the consumer purchases title insurance, and is given to all consumers who meet the criteria (i.e. it is the title producer's fee structure). Does giving this discount violate Maryland law?
 - **Answer:** No, as stated in slide number 16, title producers may offer reduced or discounted settlement fees. This is not a rebate and would not violate Maryland law as long as the discount is not contingent upon the purchase of title insurance.
- **Question:** A title producer offers a \$50.00 discount to all consumers who perform future settlements with the title producer on the same property involved in the transaction. This discount is given whether or not the consumer purchases title insurance, and is given to all consumers who meet this criteria (i.e. it is the title producer's fee structure). Does giving this discount violate Maryland law?
 - **Answer:** No. A title producer may discount their settlement fees as long as they are not contingent upon the purchase of insurance.

Additional Questions

- **Question:** For marketing purposes, a title producer regularly appears at real estate broker's offices and gives free seminars on real estate topics. The title producer also answers questions from real estate agents who contact the title producer by telephone or email without charge. These activities are performed for all real estate agents whether or not the real estate agent refers any business to the title insurance producer. Does this activity violate Maryland law?
 - **Answer:** No, as provided in slides 14 and 15, title producers may offer or give educational and promotional materials that cost no more than \$50 and the seminars and information is not tied to the purchase of title insurance. This is not a rebate and would not violate Maryland law as long as these are not offered as continuing education credits.
- **Question:** A title producer attempts to give consumers significant savings by applying the reissue rate to consumer if the title producer is able to obtain proof of a prior policy. However, there are times, a prior policy is not obtainable for various reasons. Thus, in order to level the field, the title producer discounts the settlement fees to the consumer. Does this discount violate Maryland law?
 - **Answer:** Yes, as the reduction in fees is directly related to the purchase of title insurance and would constitute a violation of the Insurance Article.

Contact Information

Maryland Insurance Administration

 800-492-6116 | 410-468-2000 | 800-735-2258 (TTY)

 insurance.maryland.gov

enforcement.mia@maryland.gov



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**THANK
YOU!**