

Local Premium Tax Advisory Council

November 17, 2008 ~ 1:30 pm

Department of Insurance Hearing Room

Minutes

Members Present

Commissioner Sharon Clark, Chair
Neil Hackworth
JD Chaney, proxy for Mayor Will Cox
Tom Troth
Tom Troth, proxy for Judge David Jenkins
David Finney, proxy for Greg Kosse
Mike Lane
Mark Treesh
Stan Logan

Welcome and Roll Call

Commissioner Clark called the meeting to order and the roll was called. A quorum was present.

Approval of Minutes

The minutes for the meeting of October 22, 2008 were approved as drafted.

DOI Update on Implementation Efforts

- a. Assessment – The Department has received \$190,600 from 51% of the insurance companies and surplus lines brokers assessed. The deadline to pay the assessment is December 5th. The Department will be sending a follow-up letter to those who have not responded with a deadline of December 31st to pay the assessment. Administrative action will be taken against those not responding by that deadline.
- b. Public Meeting Calendar – The meeting dates and minutes from the Local Government Premium Tax Advisory Council and its subcommittees are now posted on the public meeting calendar on the Department's Web site. It was requested that subcommittee chairs let DJ Wasson know if they do not want call-in information posted for a subcommittee call.

Subcommittee Reports

- a. Risk Location Criteria: Neil Hackworth reported that the subcommittee met primarily to discuss the draft of the verification regulation. The following issues were discussed:
 - The question was raised as to whether the 90% accuracy standard was too low. The Department chose the 90% accuracy standard because that is the current standard used in market conduct examinations. Additionally, due to issues with the filings at the Secretary of State's Office and the process of converting those filings to electronic maps through the Commonwealth's Office of Technology, the

Department believes that 90% is an appropriate starting point. It was noted that the Advisory Council is charged with reviewing the verification criteria annually. Therefore, this standard could be revised in subsequent years.

- Members of the subcommittee felt that a requirement for verification should include quarterly updates of boundary data, street addresses and zip codes. That requirement was added to the draft regulation.
- Members of the subcommittee felt that an entity trying to cure a noted deficiency should be required to re-submit their address data for testing rather than certify that the deficiency was cured. That required was added to the draft regulation.

The draft verification, as amended by the subcommittee, was provided to the Advisory Council members for review and comment. Any comments should be sent to DJ Wasson no later than December 5, 2008. The Department is statutorily required to file the regulation by noon on December 15, 2008.

The Department was asked to clarify whether it was verifying the accuracy of the data or whether it was verifying the operation of the software. Based on discussions during the legislative session, it is the Department's understanding that it is charged with verifying the accuracy with which a risk location system identifies that an address is within a city boundary. Insurers are also required to maintain a system of due diligence to ensure that once the appropriate taxing jurisdiction is identified, the appropriate tax is applied to that type of policy. Both risk location and due diligence are required to obtain a safe harbor from civil penalties. The Department will utilize the verification process to ensure the accuracy of risk location and it will utilize market conduct examinations or other investigations to ensure that an insurer has in place a system of due diligence.

b. Due Diligence: David Finney provided the subcommittee report. The subcommittee has been focusing on the development of a risk location chart. The purpose of the chart is to assist insurers in determining how to allocate specific lines of insurance to taxing jurisdictions. One change that was noted to the risk location chart from the previous draft is that the guidelines have been moved from the end of the document to the beginning of the document.

It was noted that agents need to be educated about the availability of this tool.

It was noted that if insurers operate within the guidelines of the risk location chart, the Department will consider their system of due diligence will be adequate to receive a safe harbor (provided they are utilizing a verified risk location system.) However, the Department will consider rationale other than that listed on the chart.

The Department will provide the risk location chart electronically to the Advisory Council members and will also post the chart on its Web site.

c. Data Collection: Mark Treesh reported that the subcommittee held a teleconference on November 7, 2008, to provide members with an update of the activities of the Advisory Council. At this time, the subcommittee does not have any new initiatives.

d. Education: The subcommittee has been gathering comments on two documents: A Frequently Asked Questions document and a publication regarding the appeals process. The comments received have been incorporated and the brochures are now final. They will be posted on the Department's Web site and distributed to agents.

e. Future Reforms: Mike Lane reported that the subcommittee had not met since the last Advisory Council meeting. However, the subcommittee members have been given drafting assignments for 2010 legislation.

Old Business

There was no old business to report.

New Business

Corky Coryell attended the Advisory Council meeting to discuss the challenges that title insurance companies are having with compliance with the disclosure requirements of HB 524. It was noted that Mr. Coryell was not asking for an exemption from the requirements for his company, Stewart Title, but rather some direction from the Advisory Council and the Department. Title insurers deal primarily with the lenders (80% of their policies are lender policies) and receive one premium payment for their policy. Many times, a mortgage is sold and the insurer is not notified of the new owner. Their product is unique in that there is no renewal of the policy or specific expiration date of the policy. It was also noted that the risk in a title policy is often described by metes and bounds rather than a street address. Additionally, unlike other types of insurance, title insurers protect against risk in the past rather than future losses. Due to the nature of the product, title insurers do not typically maintain a listing of their current insureds.

While the future notice requirements can be addressed, a three step approach was proposed for compliance with the one-time disclosure requirement:

- Publish a notice in the three statewide newspapers in Kentucky with the required language;
- Send a notice by mail to the approximately 250 licensed mortgage companies in Kentucky; and
- Include the language in a direct mailing to approximately 50,000 insureds identified in a class action settlement in Northern Kentucky.

The Advisory Council members noted the following with respect to the proposal:

- The Department is ultimately required with enforcing the disclosure requirements.
- The Courier-Journal is not necessarily "statewide", therefore Stewart Title may want to consider including a notice in all daily newspapers.
- The general 5-year statute of limitations could be used as an "expiration date" for policies when developing a list of policyholders to receive the notice.

Next Meeting

The next meeting of the Advisory Council will be held on December 16, 2008 at 1:30 in the DOI Hearing Room.