

SB 133

COMMONLY ASKED QUESTIONS

Foreword

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The Q&A contains highlights of the basic requirements pertaining to marketing practices and the licensing of title marketing representatives. This Q&A is no more than a guide. No guide can anticipate all possible situations, nor can any guide provide irrevocable rules for dealing with questions which may arise. No guidelines can be written to cover every conceivable situation. The Q&A is not a textbook and is not intended to be relied upon as a statement of the law by the CLTA members or their employees or any other person.

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REGISTRATION OF TITLE MARKETING REPRESENTATIVES UNDER SB 133

Q. Who has to get a certificate of registration as a “title marketing representative”?

A. Anyone who is employed by a title insurer, underwritten title company or controlled escrow company whose primary duty is to market, offer, solicit, negotiate or sell title insurance.

[\(Insurance Code Section 12418 \(a\) & \(b\)\)](#)

Q. Are there any exemptions from the definition of “title marketing representative”?

A. Yes. A person is exempt if their primary duties directly involve the creation, production, or issuance of the title policy or the performance of escrow services.

[\(Insurance Code Section 12418 \(b\)\)](#)

OBTAINING A “CERTIFICATE OF REGISTRATION” AS A TITLE MARKETING REPRESENTATIVE

Q. How does a person register as a title marketing representative?

A. A title marketing representative must file an online application with the Department of Insurance (“Department”) through an automated process that will be available on the Department website.

[\(Insurance Code Section 12418.1\)](#)

Q. Will paper applications be accepted by the Department?

A. No. The Department will accept only those applications that are submitted online through its website.

Q. When must a title marketing representative apply for a certificate of registration?

- A. Beginning January 1, 2009, prior to marketing, offering, soliciting, negotiating or selling title insurance an employee must submit an online application which allows them to act as a title marketing representative on a provisional basis until their application is acted upon.

This automated system is expected to be operational sometime in the first week of December.

Any person who knowingly markets title insurance without having applied for a certificate of registration is subject to a cease and desist order from the Department, and the potential rejection of their online application.

[\(Insurance Code Sections 12418 \(b\) & \(c\), and 12418.2 \(b\)\)](#)

Q. What information will be required on the online application?

- A. The online application must contain the following information:
- The title marketing representative's residential address, mailing address and business address, and social security number.
 - A statement by the applicant as to whether a previous certificate of registration has been suspended, revoked or limited.
 - A filing fee for the Department's actual costs, not to exceed \$200.
 - Fingerprinting and a Department of Justice background check.

NOTE: In addition to the above, the title company employing the title marketing representative must provide a statement by an officer of the employer certifying that training has already been provided, or will be provided to the title marketing representative applicant on the anti-rebate law within 60 days of the hiring date or date of online application.

This statement should be submitted as soon as possible. The Department will develop an automated online process for accepting these statements directly from the title company that is separate from the online application submitted by the title marketing representative applicant.

[\(Insurance Code Section 12418.1 \(b\)\)](#)

Q. Will there be a standardized form for the online application?

A. Yes. The Department will prescribe a standardized online application and establish the disclosure of information to determine whether the prerequisites for the certificate have been met.

[\(Insurance Code Section 12418.1 \(a\)\)](#)

Q. How long will the certificate of registration last?

A. Three years. The certificate can be renewed and the Department is required to send out a renewal application not less than 60 days before a certificate will expire.

[\(Insurance Code Section 12418.3 \(a\)\)](#)

Q. Can a current title marketing representative market title insurance before they are issued a certificate of registration under the new law?

A. Yes. Anticipating delays in the implementation of the program and certification process, SB 133 was written so that once an online application has been submitted and is pending, the title marketing representative may immediately solicit, sell or market title insurance until the online application is approved or denied. The applicant will be considered to be operating on a provisional basis, and all compliance requirements will still apply.

[\(Insurance Code Section 12418.1 \(e\)\)](#)

However, a title marketing representative who has had his or her registration/certification revoked in the past may NOT operate on a provisional basis.

[\(Insurance Code Section 12418.1 \(g\)\)](#)

Q. Will the Department track which company employs a title marketing representative?

A. Yes. If a title marketing representative's employment is terminated then the title company must notify the Department within 30 days. If a title marketing representative is hired by a different company then the company has 30 days to notify the Department that the title marketing representative was hired.

This process will take place through the Department's online monitoring system that will be developed through their website.

[\(Insurance Code Section 12418.1 \(f\)\)](#)

Q. If a title marketing representative who has already received his or her certificate of registration is terminated or moves to a different title company, does the certificate of registration remain with the original title company employer?

A. No. It is the title marketing representative who is registered with the Department, not the title company. If the title marketing representative leaves the employment of a title company for any reason, the certificate of registration would go with the title marketing representative.

[\(Insurance Code Section 12418 \(a\)\)](#)

MARKETING ACTIVITIES REGULATED UNDER THE NEW LAW

Q. Prior to the enactment of SB 133, there was a general prohibition in existing law against providing any consideration, compensation, or commission for the referral of title business. Is that still in effect?

A. Yes. The pre-existing prohibition against providing any consideration, compensation, or commission as an inducement for the placement or referral of title business was left completely intact and was not affected by the passage of SB 133.

[\(Insurance Code Section 12404 \(a\)\)](#)

Q. Can a title marketing representative take a person out to lunch to market title insurance?

A. No. Under the new law expenditures for food, beverages, and entertainment are prohibited.

[\(Insurance Code Section 12404 \(c\) \(8\)\)](#)

Q. Can a title marketing representative take a person to a sporting event?

A. No. That would be considered entertainment and cannot be the subject of an expense.

[\(Insurance Code Section 12404 \(c\) \(8\)\)](#)

Q. Are there any other expenses that are specifically prohibited under the new law?

A. Yes. The law makes it clear that advertising or paying for advertising in any newspaper, newsletter, magazine or publication that is produced by or on behalf of a person that results in a direct or indirect subsidy to the person violates the law.

[\(Insurance Code Section 12404 \(c\) \(7\)\)](#)

Q. What is permitted as an expense?

A. Limited promotional items are permitted. These items must have a permanently affixed **title company logo** and cannot have a value of more than \$10. Gift certificates and gift cards are not promotional items.

[\(Insurance Code Section 12404 \(d\) \(1\)\)](#)

Q. Can gift cards or certificates be provided to 12404 persons if they have a title company logo permanently affixed to them?

A. No. Gift cards are specifically prohibited as “promotional items” under SB 133, irrespective of whether or not they have a title company logo permanently affixed to them.

[\(Insurance Code Section 12404 \(d\) \(1\)\)](#)

Q. Can a title marketing representative provide educational materials?

A. Yes. However, this exclusion only applies to educational materials exclusively related to the business of title insurance and only if continuing education credits are not offered to the recipient.

[\(Insurance Code Section 12404 \(d\) \(2\)\)](#)

Q. If a title marketing representative or title company is providing an educational seminar or educational materials exclusively related to the business of title insurance, can food, beverages or entertainment be provided at that time?

A. No. Food, beverages and entertainment are specifically prohibited by SB 133, irrespective of when they are being provided. In addition, educational seminars and materials devoted to the business of title insurance, when provided, cannot be accompanied by continuing education credits for the attendees, such as a real estate broker or agent.

[\(Insurance Code Section 12404 \(c\) \(8\) and 12404 \(d\) \(2\)\)](#)

Q. May a title marketing representative volunteer time instead of providing other types of benefits now prohibited under SB 133?

A. No. It is clear under the law that the furnishing of all or any part of the time or productive effort of any title company employee to any person for any service unrelated to the title business is prohibited.

[\(Insurance Code Section 12404\(c\) \(6\)\)](#)

Q. May title marketing representatives or other employees use their personal funds or part of their salary, compensation or commissions to provide things of value not otherwise permitted by SB 133 if they are not reimbursed?

A. No. The law prohibits a title marketing representative from providing prohibited inducements or expenditures, irrespective of how the title marketing representative is paying for those inducements.

[\(Insurance Code Section 12404 and 12408.5\)](#)

Q. Can a title company increase a title marketing representative's salary so that the employee can pay for expenses directly from their salary?

A. No. The law specifically prohibits a title marketing representative or title company from providing prohibited inducements or expenditures, regardless of who is eventually footing the bill.

It is important to focus on the expenditure itself to determine if it is illegal, not the source from which the expenditure was made. Even if the title marketing representative or employee is not reimbursed through an expense account for an

expenditure, the expenditure or inducement is illegal if it falls into prohibited categories as defined by existing law and SB 133.

[\(Insurance Code Section 12404 and 12408.5\)](#)

Q. Can a title marketing representative use another shell company or entity controlled by the title marketing representative or his or her title company employer to provide expenditures or inducements that would otherwise be prohibited by SB 133 or existing law?

A. No. The law is clear that unlawful inducements are prohibited whether made directly or indirectly, including through a separate company not regulated by the Department.

[\(Insurance Code Section 12418.4 \(d\)\)](#)

Q. Are all title company employees, owners and managers or escrow professionals bound by expenditure limitations under the new law enacted by SB 133 or does it apply only to “title marketing representatives”?

A. *It applies to everyone.* While title marketing representatives are the only individuals required to obtain a certificate of registration from the Department, *the new limitations on expenditures created by SB 133 apply to every title company and every employee whether a payment is made directly or indirectly.*

[\(Insurance Code Section 12404 \(a\)\)](#)

Q. What happened to the law that allowed reasonable expenditure for food, beverages, entertainment and educational programs so long as it was a permitted IRS expense?

A. Those provisions of law (former Insurance Code Section 12404 (d)) have been repealed by Senate Bill 133.

Q. Can a title company or title marketing representatives rely on Bulletins previously issued by the Department?

A. No. Prior Bulletins issued by the Department are considered to be “underground regulations” and should not be relied upon to determine the lawfulness of any expenditure under the new law.

PENALTIES AND ENFORCEMENT UNDER THE NEW LAW

Q. What if a person is marketing title insurance without having a certificate of registration?

A. A cease and desist order may be issued against any person who knowingly markets title insurance without having applied for or obtained a certificate of registration.

[\(Insurance Code Section 12418 \(c\)\)](#)

However, a title marketing representative may market title insurance products and services after having submitted an online application and while awaiting a Department approval or disapproval of his or her online application.

[\(Insurance Code Section 12418.1 \(e\)\)](#)

Q. What happens if a registered title marketing representative violates the law?

A. There will be a hearing to determine if the title marketing representative violated the law after the Department brings an administrative action against a title marketing representative.

[\(Insurance Code Section 12418.4\)](#)

Q. What if the title marketing representative loses at the hearing?

A. If the Department determines that the title marketing representative has violated the law then the Department may temporarily suspend or temporarily or permanently revoke the title marketing representative's certificate of registration or require the title marketing representative to surrender the certificate of registration. The Department may also impose a monetary penalty.

[\(Insurance Code Section 12418.4\)](#)

Q. If the Department imposes a monetary penalty can the title company pay the penalty?

A. No. The title company cannot pay the penalty or give the title marketing representative the funds to pay the penalty. The penalty must be paid from the personal funds of the title marketing representative.

[\(Insurance Code Section 12418.4 \(d\)\)](#)

Q. Can the title company be held liable for the acts of its title marketing representative?

A. Yes. If the title company has actual knowledge of the violation the title company may also be subject to an administrative action by the Department. While SB 133 was designed to create a registration/certification program for individual title marketing representatives, pre-existing enforcement powers held by the Department were left intact.

[\(Insurance Code Section 12418.4 \(d\)\)](#)

Q. Is a separate company controlled by the title marketing representative subject to the law?

A. Yes. A title marketing representative may not engage in any prohibited activity through a separate entity controlled by the title marketing representative or by the title marketing representative's employer.

[\(Insurance Code Section 12418.4 \(d\)\)](#)

Q. If a title marketing representative's certificate is revoked can the title marketing representative continue to work?

A. No. A title marketing representative whose certificate of registration is revoked cannot reapply for a new certificate for five years.

[\(Insurance Code Section 12418.4 \(e\)\)](#)