

# COMMONWEALTH OF VIRGINIA



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## STATE CORPORATION COMMISSION BUREAU OF INSURANCE

June 29, 2005

Administrative Letter 2005-13

**TO: All Insurers Licensed to Write Title Insurance in Virginia**  
**RE: Negotiating Title Insurance Risk Rates; Withdrawal of Administrative Letter 2004-07**

**NOTE: EACH INSURER RECEIVING THIS ADMINISTRATIVE LETTER IS INSTRUCTED TO PROVIDE A COPY TO EACH OF ITS CURRENTLY APPOINTED AGENTS AND TO EACH NEWLY APPOINTED AGENT COMMENCING IMMEDIATELY.**

On July 1, 2005, the provisions of House Bill 2821 become effective. Under the new law, subsection E is added to § 38.2-4608 of the Code of Virginia which allows title insurers and title insurance agents to negotiate title insurance risk rates for competitive purposes.

The Bureau of Insurance (Bureau) has received numerous questions from the title insurance industry regarding the application of the changes brought about by House Bill 2821. In an effort to provide guidance to the title insurance industry, this administrative letter sets forth the Bureau's position regarding certain aspects of the new law. The following series of questions and answers address many of the industry's concerns:

**1. On July 1, 2005, Virginia law will allow title insurance risk rates to be negotiated. What activity or activities constitute negotiation?**

As a general rule, the Bureau would consider negotiation to have occurred when there is an offer and acceptance between the title insurer or title insurance agent and any potential insured that results in an agreement to charge the insured a title insurance risk rate that differs from the title insurer's published rate. For example, if, for competitive reasons, a title insurance agent offers a rate to a potential insured that is less than the title insurer's published rate and the potential insured accepts the proffered rate, the Bureau would consider the rate to have been negotiated.

It is important to note that while Chapter 46 of Title 38.2 of the Code of Virginia does not specifically require that rate schedules be published, as a practical matter, the business of title insurance cannot be conducted without published rates. Once a title insurer makes its rates available, the rates become "published" regardless of the method used to communicate the rates.

**2. How much authority does the title insurance agent have to negotiate title insurance risk rates?**

The agent's authority is established in the contract negotiated between the title insurer and its agent. The Bureau does not regulate these contracts.

**3. Is it permissible for a title insurance agent to forego all or a portion of his/her title insurance commission in order to reduce the premium owed by the insured?**

Yes. The agent's commission is included within the expense portion of title insurance risk rates. Prior to July 1, 2005, Virginia law did not permit agents to forego some or all of their commission for competitive purposes. The practice was considered illegal rebating.

**4. Are title insurers or title insurance agents required to negotiate with any or all potential insureds?**

No. Section 38.2-4608 E states that title insurers or title insurance agents may negotiate title insurance risk rates.

**5. What circumstances would render a negotiated title insurance risk rate to be unfairly discriminatory?**

As long as the title insurance risk rate has been negotiated as set forth above, it is deemed not to be unfairly discriminatory.

**6. Do the standards of "reasonable and adequate" contained in § 38.2-4608 A apply to individually negotiated rates?**

No. The standards of "reasonable and adequate" apply to the classes of risks. In other words, the statute does not provide for application of the "reasonable and adequate" standards to the rate that is charged for an individual risk.

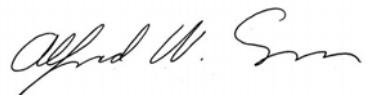
It is important to note that although the new law does not contain provisions that establish the lowest rate that an insurer or agent may negotiate, the title insurer is ultimately responsible for maintaining overall rate levels for classes of risks sufficient to satisfy the standards of "reasonable and adequate" as set forth in § 38.2-4608 A.

For the purposes of determining compliance with the standards of "reasonable and adequate" for classes of risks, title insurance risk rates are considered to be reasonable and adequate if they provide for the expected costs of claims, claim expenses, operating expenses and all other reasonable and necessary costs, but do not produce unreasonable profits.

Please note that Administrative Letter 2004-07 is hereby withdrawn. Questions pertaining to Administrative Letter 2005-13 should be directed to:

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Sincerely,

A handwritten signature in black ink, appearing to read "Alfred W. Gross".

Alfred W. Gross  
Commissioner of Insurance