



TRO Granted as Illinois Seeks to Amend Financial Interest Disclosure Form

Court Report, Regulatory Updates
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A state judge granted a request for a stay of implementation against the Illinois Department of Financial and Professional Regulation (IDFPR), which was scheduled to implement a revised DS-1 Disclosure of Financial Interest Form this month. The case was filed by Attorneys' Title Guaranty Fund Inc. (ATG) and joined by the Illinois Land Title Association.

The IDFPR has been working to revise the form, which has been around since May 1997, since it initially released a revised form in April. Based on industry feedback, the IDFPR further amended the DS-1 content and delayed implementation from April to July, ATG noted in a release. On June 26, ATG hosted representatives of the Illinois Land Title Association and the Illinois Real Estate Lawyers Association for a meeting with the IDFPR to express the industry's remaining concerns. ATG filed the suit for injunctive relief as the July 1 implementation date approached with no resolution to what it deemed to be important outstanding issues.

ATG filed the suit because just before the deadline, the industry and the regulator reached an impasse. The release states that ATG believed the form, which is meant to disclose to consumers the fees related to title and settlement services, does not accomplish its intended objective, contains terms that are confusing to consumers, exceeds the regulator's statutory authority and shows serious bias against lawyer agents both in the disclosure form itself and in the instructions for completing it.

ATG Senior Vice President Hank Shulruff told The Legal Description that "I believe that the department's efforts are well intended but the current draft of the form would have been confusing to consumers and needs more clarification. We would like to see a form that encourages consumers to seek counsel when engaging in a real estate transaction."

He also said he would like the industry to have a reasonable time to implement the processes surrounding the production and distribution of the form once the form has been implemented, noting that systems would need to be changed to use the form and that employees will need to be educated on the new form.

"The other big issue that I see here is that the department has some concerns about bad actors in the industry," Shulruff said. "I think they should put their resources into enforcement actions against those who are the unscrupulous few. It doesn't mean the disclosures wouldn't be helpful. I [just] think that that is the best place for them to spend their time."

The complaint seeks preliminary and permanent injunction and a declaration that the department "improperly, exceeded its statutory authority and failed to follow the statutorily prescribed rulemaking process and therefore it does not have the ability implement its new DS-1 form." It also included counts for failure to comply with the procedural requirements of the Illinois Administrative Procedure Act and writ of prohibition.

Though ATG is prepared to litigate the issue, the goal is to work with the department to resolve remaining issues and come up with a form that provides clear guidance to consumers while being within the statutory authority of the department. Shulruff said that he is confident ATG will be able to work with the department to reach this goal.

"We certainly encourage the department to provide meaningful guidance and improve consumer disclosure," he said. "Consumers should understand the transaction and the fees. Frankly, all of this leads back to the importance of consumers hiring counsel and having an advocate when they are doing the real estate transaction. They only do this once or twice in a lifetime, and having a lawyer there to guide them through the process and advocate on their behalf is a great benefit to consumers."