

SB-133 Restrictions

It has been eight years since SB-133 went into effect, significantly changing the landscape of our industry by toughening Insurance Code Section 12404, which states that it is unlawful for any title insurer, underwritten title company or controlled escrow company to provide, directly or indirectly, anything of value to any person as an inducement for the placement or referral of title business. A "12404 person" includes: sellers, buyers, borrowers, lenders, and agents, attorneys or employees of those persons.

And while there are a few companies that may still feel the law is just a suggestion, the California regulators are not of that mind. Title companies risk stiff penalties and marketing reps risk loss of their licenses if they violate these laws. The California Department of Insurance (CDI) has increased its enforcement efforts by way of quadrupling its number of investigators. In addition, the Department has recently appointed George Mueller to the position of Deputy Commissioner of the enforcement branch of the CDI.

Here is a brief reminder of a few of the broad categories of SB-133 restrictions; examples of some of our competitors' prohibited activities that have been reported and disciplined, and a reminder of what we are permitted to do in each category.

PROHIBITED	EXAMPLE OF RECENT PROHIBITED ACTIVITY	PERMITTED
Paying for any advertising or leads, or creating and/or providing any marketing materials (postcard, flyers, postage, etc.) on behalf of any 12404 persons.	We cannot provide property address and phone numbers for cold calling, or email information for sending out e-blasts on the agent's behalf (like open house and just listed flyers.) We cannot design and upload agent-branded marketing materials to various websites.	We can provide premium access to property information through various platforms, as long as information considered to be on a premium tier is paid for by the 12404 person(s).
Expenditures for meals, food, beverages, and entertainment for any 12404 person(s).	We cannot provide bottled water, snacks or even a single Hershey's Kiss (yes, a competitor's title marketing rep received a penalty for handing out a Hershey's Kiss with her business card).	We can have lunch with a 12404 person provided that we pay only for our own meal.
Raffle/Door Prizes, Gifts, Gift Certificates, Flowers, etc. to any 12404 person(s).	We cannot provide gifts, such as Starbucks gift cards, to lenders, borrowers or agents as a "Thank You" for business.	We can provide our approved marketing and promotional items to our 12404 persons.
Education and Informational Materials for 12404 person(s) that are not exclusively or predominantly related to the title insurance and escrow closing business.	We cannot lecture, educate or train on matters not related to title insurance, nor provide open house materials unless certain criteria are met. We also cannot provide informational materials such as sporting events schedules under any circumstances.	We can create and provide approved title and escrow relevant education and educational materials to any 12404 person(s), without providing continuing education credits or food.
Quoting or charging Wrong or Discount Rates – Title rates are filed with the state and charging anything other than an appropriate filed rate is illegal; even "accidentally" quoting a rate that is too low is also illegal.	We cannot provide a "Major Projects" rate if the particular transaction does not fall within that filed rate exemption, and we cannot waive or discount a fee as a favor to any 12404 person(s).	We will check with our expert Advisory Title Staff to see if any "special" rates are available and to obtain the best possible filed rate for specific circumstances or transactions.
Financially and/or physically supporting or sponsoring a Broker or Agent-specific event, or offering assistance with the business expenses of any 12404 person(s).	We cannot pay for a table or sponsor an event that is Broker or Agent specific, nor can our employees offer their time, support or productive effort (e.g., "manning tables") at these events.	We can provide approved inexpensive promotional materials and items, and we can assist with and talk about the title and escrow processes.