

## **USE MY TITLE COMPANY OR PAY**

In The State Insurance Department opinion of January 20, 2005, the issue presented was whether developers and sponsors may require purchasers of their properties to pay a fee if they used a title company/title agent of their own choice while exempting a purchaser from the fee if they used a title company/title agent chosen by the developers and sponsors.

The Insurance Department held that the extra fee payable by non-complying purchasers constituted an illegal kickback under Section 6409 (d) of the Insurance Department Opinion.

At a recent meeting of the Condominium and Cooperative Committee of the State Bar, David Berkey of the firm of Gallet, Dreyer, & Berkey, LLP presented HUD Informal Opinion 179 from December 28, 1988 that stated a seller who charges an additional fee to a purchaser who chooses to purchase title insurance from a title company other than a designated title company has engaged in economic coercion in violation of Section 9 of RESPA. A copy of the HUD opinion is also attached.

At the same meeting, Ken Demario of the State Attorney General's office stated that his office is rejecting any condominium offering plans that require purchasers to pay an additional fee if they do not use the sponsor's designated title company/title agent. He also added that to the extent feasible, they will require existing plans that have such a provision be amended to delete any provisions that require a purchaser to pay an additional fee if they do not use the sponsor's designated title company/title agent.