

TEXAS HOUSE OF REPRESENTATIVES  
**COMMITTEE ON  
COUNTY AFFAIRS**



ID# 14657  
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ROBERT ECKELS  
Chairman

January 8, 1992

RG-305

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County Affairs Committee

The Honorable Dan Morales  
ATTORNEY GENERAL OF THE STATE OF TEXAS  
P.O. Box 12548  
Austin, TX 78711

Dear General Morales:

As chairman of the House County Affairs Committee, I request the opinion of your office on the application of Article 21.48A, Insurance Code.

**Section 2(a) of Article 21.48A provides:**

(a) No Lender shall require a fee of over Ten Dollars (\$10.00) for the substitution by the Borrower of an insurance policy for another insurance policy still in effect, or require any fee for the furnishing by the Borrower of an insurance policy for an existing policy upon termination of the existing policy, when such insurance policy is provided through an insurance company duly licensed to do business in the State of Texas pursuant to the provisions of this Insurance Code.

**Section 2 (e) of Article 21,48A was added by Section 11.31, Chapter 242, Acts of the 72nd Legislature, Regular Session, 1991. That subsection provides:**

(e) Upon the sale or transfer of its ownership interest in real or personal property, a lender is subject to the payment of a substitution fee as described in Section 2(a) of this article and the lender may not, directly or indirectly charge the borrower for such substitution fee.

Does the new subsection authorize an insurance agent to collect the substitution fee from a lender if the lender sells the mortgage in the secondary mortgage market and requests an endorsement reflecting the change in the identity of the mortgage holder from the agent? I understand that the Professional Insurance Agents Association has suggested that the subsection does authorize the collection of the fee under those circumstances.

P.O. BOX 2910 • AUSTIN, TEXAS 78768-2910 • PHONE 512-463-0760

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ELAINE H. ARNOLD  
Committee Clerk

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In analyzing this question, you may wish to consider new Article 21.35B, Insurance Code, added by Section 11.17, Chapter 242, Acts of the 72nd Legislature, Regular Session, 1991, which provides:

Art. 21.35B. PERMISSIBLE PAYMENTS. (a) No payment may be solicited or collected by an insurer, its agent, or sponsoring organization in connection with an application for insurance or the issuance of a policy other than premiums, taxes, finance charges, policy fees, agent fees, service fees, inspection fees, or membership dues in a sponsoring organization. (b) Criminal penalties for violation of this article are as provided for under Section 12, Article 21.49-1 of this code.

Thank you for your assistance with this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Eckels', written in a cursive style.

Robert Eckels  
CHAIRMAN