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HOUSE OF REPRESENTATIVES
COMMITTEE ON
INSURANCE
ANALYSIS

BILL #: HB 403

RELATING TO: Title Insurance

SPONSOR(S): Representative Byrd

COMPANION BILL(S): SB 746 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) INSURANCE
(2)
(3)
(4)
(5)

I. SUMMARY:

Under Florida law, title insurance rates are uniform and are promulgated by the Department of Insurance. Current law requires title insurers to retain at least 30 percent of the premiums collected -- which means that title insurance agents retain up to 70 percent of premiums collected. Moreover, current law requires title insurance agents to charge separately, at no less than cost, for "related title services" which include preparing and obtaining title information, preparing closing documents, conducting the closing, and handling the disbursing of funds related to the closing.

Florida law also prohibits title insurers and title insurance agents from engaging in the practice of "rebating" -- i.e., directly or indirectly paying money or any consideration to a customer as an inducement to title insurance. As such, title insurance agents are not permitted to negotiate a reduction of the 70 percent portion of the premium retained by title insurance agents.

The reimbursement framework for title insurance agents has been the subject of litigation for several years. In Butler v. Department of Insurance, a developer argued that Florida's anti-rebating laws are unconstitutional since they impair the public's ability to negotiate while serving no legitimate state purpose. On February 26, 1999 (and by clarification on March 8, 1999), Leon County Circuit Judge, Terry Lewis, declared unconstitutional those portions of Florida Statutes and Department rules which prohibit a title insurance agent from discounting or rebating any amount of the title insurance agent's portion of the premium. As a result of this case, title insurance agents are now permitted to negotiate with, and offer rebates to, customers on their portion of the premium.

The bill would restore the remuneration framework in existence for title insurance agents before the Butler case -- i.e. the Florida law would again prohibit title insurance agents from negotiating, or offering any rebates on, the 70 percent portion of the premium retained by the title insurance agent. The bill would also reenact anti-rebating provisions for title insurance.

This bill has no fiscal impact on state or local government.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Title Insurance Overview

Title insurance insures "owners of real property against loss by encumbrance, defective titles, invalidity, or adverse claim to title." See Section 624.608, F.S. Title insurance is different than traditional property and casualty (P&C) insurance in several ways, including the kind of risk insured and the relationship between losses and expenses.

In traditional P&C insurance, the insurer accepts responsibility for certain risks which are out of its control and which may occur in the future -- e.g., hurricanes, floods, and car accidents. In title insurance, the insurer "insures against ignorance of the past, that is, whether some unknown past event has clouded the ownership interest or lien interest in a parcel of real property that the insured believes to exist when the title insurance policy is issued."[1]

Because of the difference in the type of risk insured, the relationship between losses and expenses in title insurance is also different than in traditional P&C insurance. In P&C insurance, insurers might ordinarily expend the bulk of their revenues to pay for losses and loss adjustment while title insurers are likely to expend only a small portion of their revenues to pay for losses and loss adjustment. Conversely, P&C insurers might spend a small portion of revenues on non-loss expenses, while title insurers might expend the bulk of its revenues on non-loss expenses.

This disparity is due to the fact that there are more activities performed by agents in title insurance than in P&C insurance. Title insurance agents' activities include most of the same activities as P&C insurance agents, such as marketing and producing policies; however, title insurance agents also perform other activities such as conducting title searches and examinations, reviewing public documents, handling funds in escrow, preparing closing documents, and conducting closings.

Title Insurance Agents

A title insurer's primary function is to reduce the likelihood of loss by increasing the level of knowledge of potential defects in the title prior to issuing the policy. In order to gain this knowledge, title insurers must have access to a variety of local public documents, such as deeds, mortgages, and court judgments. This need for local information, in addition to the expanded activities discussed above, can require title insurance agents to play a more active role than traditional P&C insurance agents.

Insurance agents are regulated by the Department of Insurance (Department) pursuant to Chapter 626, F.S.[2]

Section 626.752, F.S., sets forth the requirements relating to the exhange or brokering of insurance business. It is not clear whether this provision presently applies to title insurance agents.[3]

Rebating

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[1] Nelson R. Lipshutz, The Regulatory Economics of Title Insurance (1994), p. 1.

[2] Title insurance agents are specifically regulated in Part V of Chapter 626, F.S. (ss. 626.841 - 626.8473, F.S.). Section 626.8411, F.S., describes to what extent other provisions (outside of Part V) apply, or do not apply, to title insurance agents.

[3] According to s. 626.8411(2), F.S., certain provisions of Part I of Chapter 626, F.S., **do not** apply to title insurance agents. Among the provisions listed in s. 626.8411(2), F.S., is s. 626.752, F.S., relating to exchange of business. As such, it would seem that s. 626.752, F.S., relating to exchange of business, does not apply to title insurance agents. However, s. 626.752, F.S., is not a provision within Part I of Chapter 626, F.S. (it is in Part II of Chapter 626, F.S.).

In the insurance context, "rebating" refers to the return of money by an insurance agent to an insured. Typically, rebates are given as an inducement to conduct business with a particular insurance agent. Historically, this practice has been prohibited entirely by the Department for all lines of insurance. See eg., ss. 626.6215(5)(b) and 626.9541(1)(h), F.S. (1983). However, in 1986, the Florida Supreme Court in Department of Insurance v. Dade County Consumer Advocate's Office, 492 So.2d 1032, 1035 (1986), found Florida's laws prohibiting rebating by life insurance agents to be unconstitutional "to the extent they prohibit insurance agents from rebating any portion of their commissions to their customers" (emphasis added).[4] The Court held that the prohibitions on rebating unnecessarily limited consumers' bargaining power and did not advance a legitimate state purpose in safeguarding the public health, safety, or general welfare. Id.

In 1990, the Legislature responded to this case by revising provisions which prohibit rebating -- but only in certain circumstances.[5] Currently, rebating is prohibited to the extent it does not conform to the following requirements:

- The rebate shall be available to all insureds in the same actuarial class;
- The rebate must be in accordance with a rebating schedule filed by the agent with the insurer;
- The rebating must be uniformly applied so that all insureds who purchase the same policy through the agent for the same amount of insurance receive the same rebate;
- Rebates shall not be given to an insured with respect to a policy purchased from an insurer that prohibits its agents from rebating commissions;
- The rebate schedule must be prominently displayed in public view in the agent's place of business and must be available to the insured on request;
- The age, sex, place of residence, race, nationality, ethnic origin, marital status, or occupation of the insured or location of the risk must not be utilized in determining the percentage of the rebate or whether a rebate is available.

See s. 626.572(1), F.S.

Rebating is also addressed in s. 626.9541, F.S., relating to unfair insurance trade practices. Section 626.9541, F.S., sets forth a lengthy list of practices which are deemed to be unfair methods of competition and unfair or deceptive acts. On this list is a practice known as "unlawful rebating." Section 626.9541(1)(h), F.S. This provision, prior to 1990, prohibited all "rebating," however in 1990 (in conformity with the Florida Supreme Court case) the Legislature inserted the word "unlawful" before the word "rebating." As a result of this change, rebating is prohibited under s. 626.9541(1)(h), F.S., only when it does not conform to Florida law (i.e., s. 626.572, F.S.).

Title Insurance Rates

Adoption of Rates

Title insurance rates are uniform and are promulgated by the Department through the rulemaking process. See Rule 4-186.003, F.A.C. The rates promulgated by the Department specify the "risk premium" to be charged by title insurers. "Risk premium" is defined as:

> the charge . . . that is made by a title insurer for the assumption of the risk, under the several classifications of title insurance contracts and forms, and upon which charge a premium tax is paid under s. 624.509.

Section 627.7711(2), F.S. (emphasis added). Florida law requires title insurers to retain at least 30 percent of the "risk premium" on title policies sold by title insurance agents.

"Risk premium" does not include any other charges relating to title insurance such as preparing and obtaining title information, handling funds in escrow, preparing closing documents, and conducting closings. These services are paid for separately and are included in what are called

[4] The statutes found to be unconstitutional were ss. 626.611 and 626.9541(1)(h), F.S. (1983).

[5] See CS/HB 3621 (1990); Ch. 90-363, Laws of Florida.

"related title services." See s. 627.7711(1), F.S. According to Department rule, title insurance agents may not charge less than actual cost for the "related title services."

According to s. 627.7711(1), F.S., the "risk premium," together with the charge for "related title services," constitutes the "regular title insurance premium."

Rate Deviations

Although the Department promulgates uniform rates, Florida law permits title insurers to petition the Department for a deviation from the adopted "risk premium." See s. 627.783(1), F.S. Any authorized title insurers are allowed to join in other insurers' petition for deviations in order to receive like authority.

Remuneration for Title Insurance Agents' Activities

Florida law requires title insurers to retain at least 30 percent of the promulgated "risk premium" -- which means 70 percent of the "risk premium" is retained by the title insurance agent. Since Florida law prohibits rebating, title insurance agents may not return any portion of the "risk premium" to the customer. In addition, title insurance agents are required to charge separately for "related title services" at no less than actual cost for those services. This remuneration framework is currently the source of litigation in Leon County Ciruit Court.

Butler v. Department of Insurance

In Butler v. Department of Insurance, Butler, a developer, and intervenors, Florida Home Builders Association and National Title Insurance Company, (collectively referred to as "Butler") challenged the constitutionality of Florida's laws prohibiting title insurance agents from unlawfully rebating any portion of the "risk premium" retained by the agent. In essence, Butler argues that these laws constitute an unjustified exercise of police power and infringe upon his due process right to bargain for services. The Department of Insurance defended the case along with the following Defendant/Intervenors: Chicago Title Insurance Company, American Pioneer Title Insurance Company, Florida Land Title Association, Attorneys' Title Insurance Fund, Inc., Florida Association of Independent Title Agents, Commonwealth Land Insurance Company, Lawyers Title Insurance Company, and Stewart Title Insurance Company.

Butler's position in this litigation is that:

- the 70 percent portion of the "risk premium" retained by title insurance agents constitutes a non-negotiable "sales commission" paid to the agent for doing nothing more than procuring a customer;
- all activities performed by the title insurance agent, including any underwriting activities, are compensated for in the separate charges for "related title services;"
- there is no legitimate state interest advanced by prohibiting agents from rebating any portion of their 70 percent of the risk premium because agents are compensated separately at no less than cost for the activities which bear on the solvency of the title insurer;
- this case is no different than Dade County Consumer Advocates (discussed above), which invalidated laws prohibiting life insurance agents from rebating any portion of their commission; and
- the 70 percent portion of the "risk premium" paid to title insurance agents cannot constitutionally be set without giving Butler the right to negotiate a reduction of that amount.

The position of the Department of Insurance and Defendant/Intervenors is that:

- the 70 percent retained portion of the "risk premium" is not a sales commission paid for procuring a customer, rather it is paid to the title insurance agent for performing underwriting activities such as determining insurability of the risk and removing objections to the title;

- title insurance agents are different than other insurance agents in that they perform these underwriting activities which are normally performed by the insurer;

- underwriting activities performed by title insurance agents are not included within, nor compensated for in the charges for, "related title services;"

- there is a legitimate state interest in prohibiting title insurance agents from rebating any portion of the 70 percent of the "risk premium" because the activities of title insurance agents have a direct impact on the potential risk borne by, and solvency of, title insurers;

- since title insurance agents are different than life insurance agents, this case is not controlled by the Dade County Consumer Advocates case; and

- the statutes prohibiting rebating of the "risk premium" by title insurance agents are constitutional.

On February 26, 1999, Leon County Circuit Judge, Terry Lewis, entered an order granting summary judgment in favor of Butler and declaring unconstitutional ss. 626.611(11), 626.8437, 626.9541(1)(h)3.a., 627.780(1), 627.782, and 627.783, F.S., and Rule 4-186.003(13)(a), F.A.C.

The Department of Insurance and the Defendant/Intervenors filed motions seeking clarification and reconsideration of this order. On March 8, 1999, Judge Lewis clarified his order by stating that his previous order declared as unconstitutional "only those portions of the Statutes and Rules that prohibit a title insurance agent from discounting or rebating any portion of his or her commission." Judge Lewis also clarified that, in the context of his order, "commission" means "the agents share of the risk premium." As a result of this decision, title insurance agents may now negotiate, or offer rebates on, their portion of the title insurance risk premium.

The Real Estate Settlement Procedures Act (RESPA)

Enacted in 1974, RESPA is a federal consumer protection statute designed to help consumers in the home buying process. Congress enacted RESPA because it wanted to effect changes in the settlement process for residential real estate that will result --

(1) in more effective advance disclosure to home buyers and sellers of settlement costs;
(2) in the elimination of kickbacks or referral fees that tend to increase unneccessarily the cost of certain settlement services;
(3) in a reduction in the amounts home buyers are required to place in escrow accounts established to insure the payment of real estate taxes and insurance; and
(4) in significant reform and modernization of local recordkeeping of land title information.

12 U.S.C. Section 2601(a). RESPA applies to real estate transactions involving a federally related mortgage loan and is enforced by the United States Department of Housing and Urban Development (HUD).

B. EFFECT OF PROPOSED CHANGES:

In effect, the remuneration framework in existence for title insurance agents before the Butler case would be restored. Title insurance agents would retain up to 70 percent of the premium, which is not subject to rebate or negotiation, and would charge no less than cost for "related title services."

The bill would achieve this by providing that the title insurance agent receives his or her portion of the premium for performing certain activities, called "primary title services." In the bill, "primary title services" would include determining insurability, determining and clearing objections, preparing and issuing the title insurance commitments, and preparing and issuing the policy. Moreover, the term "risk premium" would be changed to "premium" and would be redefined to specifically include a charge for "primary title services" performed by title insurance agents.

In addition, this bill would revise provisions relating to rebating in order to prohibit the practice entirely by title insurance agents and title insurance agencies. In doing this, however, the bill would permit attorneys to abate the fees charged for "legal services."

This bill would revise the rate adoption provision so that the Department would promulgate by rule the "premium" (as defined in the bill) instead of the "risk premium" (as defined in current law). The bill would also prohibit title insurance agents in RESPA transactions from receiving any portion of the premium as payment for primary title services, unless the agent actually performs the primary title services. However, the bill would not prohibit agents in non-RESPA transactions from retaining portions of the premium when they do not perform primary title services.

Lastly, the bill would remove references to outdated title insurance terms such as "title binders" and "guarantees of title" which are no longer part of the modern title insurance business.

For additional detail on the effects of the proposed changes, see the section-by-section analysis, below.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

The bill revises language authorizing the Department of Insurance to adopt uniform title insurance rates; however, it does not create new rulemaking authority.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

   a. Does the bill increase anyone's taxes?

      No.

   b. Does the bill require or authorize an increase in any fees?

      No.

   c. Does the bill reduce total taxes, both rates and revenues?

      No.

   d. Does the bill reduce total fees, both rates and revenues?

      No.

   e. Does the bill authorize any fee or tax increase by any local government?

      No.

3. Personal Responsibility:

   a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

      No.

   b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

      N/A

4. Individual Freedom:

   a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

      No. The bill specifically restores the remuneration framework for title insurance agents to its status prior to the Butler case. As such, private organizations and individuals would not be permitted to negotiate any portion of the title insurance premium retained by the title insurance agent.

   b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

      The bill responds to a circuit court ruling which declared Florida's anti-rebating laws unconstitutional as they relate to title insurance agents. Therefore, absent the bill, negotiation of the agents portion of the premium would be a lawful activity.

5. Family Empowerment:

   a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

This bill amends ss. 626.841, 626.8411, 626.9541, 627.7711, 627.777, 627.7773, 627.7776, 627.780, 627.783, 627.7831, 627.784, 627.7841, 627.7842, 627.7845, 627.786, 627.791, and 627.792, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 626.841, F.S., modifying the definitions of "title insurance agent" and "title insurance agency." Currently, "title insurance agents" and "title insurance agencies" are defined as persons or insurance agencies who perform a variety of functions on behalf of title insurers, including (but not limited to) issuing and countersigning binders, commitments of title insurance, and guarantees of title.

This section would delete all references to the outdated terms, "binders," "commitments of title insurance," and "guarantees of title" from the definitions of "title insurance agent" and "title insurance agency."

Section 2: Amends s. 626.8411, F.S. Currently, s. 626.8411(2), F.S., lists the provisions from Part I of Ch. 626, F.S. (general provisions relating to insurance agents), which do not apply to title insurance agents and title insurance agencies. Among these provisions is s. 626.752, F.S., relating to exchange of business. Section 626.752, F.S, however, is not a provision within Part I of Ch. 626, F.S. Therefore, it is unclear whether this provision currently applies to title insurance agents and title insurance agencies.

This section strikes from s. 626.8411(2), F.S., the reference to s. 626.752, F.S., and inserts a reference to s. 626.572, F.S. As a result, this section makes s. 626.752, relating to exchange of business, applicable to title insurance agents and title insurance agencies and makes s. 626.572, relating to rebating, when allowed, inapplicable to title insurance agents and title insurance agencies.

Section 3: Amends s. 626.9541, F.S. Currently, s. 626.9541(1)(h), F.S., deems "unlawful rebating" to be an unfair method of competition and unfair or deceptive practice. Relating to title insurance, Florida law prohibits title insurers, title insurance agents, and attorneys from giving any "unlawful rebate or abatement of the charge made incident to the issuance of such insurance, any special favor or advantage, or any monetary consideration or inducement whatever." Section 626.9541(1)(h)3.a., F.S.

Florida law also currently provides that nothing precludes an abatement in an attorney's fee charged for "services rendered incident to the issuance" of title insurance. Moreover, presently, nothing in s. 626.9541(1)(h), F.S., prohibits the payment of fees to attorneys for professional services "in the actual examination of title to real property as a condition to the issuance of title insurance."

*This section deletes the modifying term, "unlawful," from the phrase "unlawful rebate" throughout s. 626.9541(1)(h), F.S. This section also provides that title insurers, title insurance agents, and title insurance agencies may not rebate any portion of their share of the premium **or** any charge for related title services below the cost of such services. As a result, all rebating in title insurance would be deemed an unfair method of competition and unfair or deceptive practice.*

In addition, this section appears to broaden the circumstances in which attorney's fees may be abated by permitting abatement of attorney's fees charged for "legal services" instead of only permitting abatment of attorney's fees for services rendered "incident to the issuance" of title insurance. According to the Florida Association of Independent Title Agents, this language would permit attorney agents to avoid the rebating prohibition and induce title insurance business through reduction of fees for "legal services." In addition, this section also appears to broaden the circumstances in which attorney's fees are permitted by allowing fees to be paid to attorneys for all "professional services" instead of merely for "professional services in the actual examination of title."

Finally, this section also provides that the payment of earned portions of premium to agents who actually perform services for the title insurer is not considered rebating.

Section 4: Amends s. 627.7711, F.S. Current law defines the terms "related title services" and "risk premium." See "Present Situation" section of analysis for a discussion of these terms.

This section would revise the definitions of the terms "risk premium" and "related title" services and would create and define the term "primary title services." The term "primary title services" would include "determining insurability in accordance with sound underwriting practices based upon an evaluation of a reasonable search and examination of the title, determination and clearance of underwriting objections and requirements to eliminate risk, preparation and issuance of a title insurance commitment setting forth the requirements to insure, and preparation and issuance of the policy." The existing term "risk premium" would be modified so that it would simply be referred to as "premium" and its definition would be revised to specifically include a charge for "primary title services" performed by a title insurer or title insurance agent and would specifically not include a commission. Lastly, this section revises the definition of "related title services" to specifically include preparing or obtaining the title "search" and "examining title" instead of current law which states, preparing or obtaining "title information."

This section, in effect, specifically responds to the issue presented in the Butler v. Department of Insurance case relating to how the title insurance agent is compensated for performing underwriting activities. This section states that these underwriting services are called "primary title services" and are compensated as a part of the premium rather than in the charges for "related title services" as asserted by Butler.

Section 5: Amends s. 627.777, F.S., to remove references to outdated terms, "title insurance binder" and "preliminary report."

Section 6: Amends s. 627.7773, F.S., to make forms accounting and auditing requirements applicable to title insurance "agencies" as well as to title insurance agents.

Section 7: Amends s. 627.7776, F.S., to make the requirements relating to furnishing supplies applicable to title insurance "agencies" as well as to title insurance agents.

Section 8: Amends s. 627.780, F.S., relating to illegal dealings in risk premium, to change the term "risk premium" to "premium". This change would conform to the definitional changes made in section 4 of the bill.

Section 9: Amends s. 627.782, F.S., relating to adoption of title insurance rates. Under current law, the Department of Insurance is authorized to adopt by rule a uniform "risk premium" to be charged for title insurance. The Department of Insurance is also authorized to establish limitations on the charges for "related title services."

Currently, under 12 U.S.C. s. 2607(b) of RESPA, no person shall give or accept any portion, split, or percentage of any charge received for the rendering of a real estate settlement service in a transaction involving a federally related mortgage loan, *other than for services actually performed*. This is basically a prohibition against kickbacks and unearned fees.

In 1995, HUD, in an investigation of Florida title insurance companies, found that some title insurers and title insurance agents were violating s. 2607(b) by providing and receiving things of value (such as providing pro forma commitments and title evidence at less than cost) as an inducement for the title insurance agent to send business to the title insurer.

This section would change the rate which is adopted by the Department of Insurance to provide that the Department adopt a "premium" (as is defined in section 4 of the bill) instead of a "risk premium" (as defined in current law). See section 4 of the section-by-section analysis for the bill's definition of "premium." This section would also remove the Department of Insurance's authority to establish limitations on the charges made for "related title services" and removes the Department's authority to review the "related title services" for purposes of revision.

This section would also prohibit title insurance agents in RESPA transations from retaining any portion of the premium paid for primary title services, unless the agent actually performs those primary title services. There is no prohibition in the bill, however, against agents retaining premium in non-RESPA transactions where they do not actually perform primary title services. As such, this language appears to suggest that agents who write non-RESPA transactions may retain portions of the premium even though they do not actually perform primary title services..

Section 10: Amends s. 627.783, F.S., relating to rate deviations. Under current law, title insurers may petition the Department of Insurance for authority to deviate from the promulgated title insurance rate. Title insurance agents may also file a petition for a deviation from the established charge for related title services. When one insurer or agent petitions for a deviation, other insurers or agents are permitted to join in the request for like authority or to oppose the deviation.

This section would modify the deviation statute so that title insurance agencies may also request deviations from the established rate for related title services. This section would also specifically provide that when a deviation is granted it applies only to those petitioners named in the order.

Section 11: Amends s. 627.7831, F.S., relating to title binders and commitments, to remove all references to title "binders" and add references to title insurance "agencies."

Section 12: Amends s. 627.784, F.S., relating to casualty title insurance, to make a technical, grammatical change in the language.

Section 13: Amends s. 627.7841, F.S., relating to insurance against adverse matters or defects in the title, to delete references to title "binders" and add references to title insurance "agencies."

Section 14: Amends s. 627.7842, F.S., relating to policy exceptions, to delete references to title "binders."

Section 15: Amends s. 627.7845, F.S., relating to determination of insurability and preservation of evidence of title, to delete references to title "binders" and add references to title insurance "agencies."

Section 16: Amends s. 627.786, F.S., relating to transaction of title insurance, to add a reference to "agencies" and delete a reference to "guarantee of title."

Section 17: Amends s. 627.791, F.S., relating to penalties against title insurers, to delete references to title "binders" and "guarantees of title."

Section 18: Amends s. 627.792, F.S., relating to liability of title insurers for defalcation by agents, to add references to title insurance "agencies."

Section 19: Provides and effective date of July 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

The bill restores the remuneration framework in existence prior to the Butler case and, as a result, restores the prohibition against title insurance agents negotiating or rebating any amount of the title insurance agent's portion of the premium. Therefore, the bill would eliminate the opportunity for prospective purchasers of title insurance to negotiate the title insurance agent's portion of the premium.

Assuming the Department of Insurance left the current risk premium rate intact ($5.75 per $1,000 for the first $100,000 of liability), the following basic examples illustrate the nature of the bill's potential impact on consumers.

Example 1 - Current law (after the Butler case)

- Title insurance risk premium for $100,000 house = $575
- 30% portion retained by title insurer = $172.50
- 70% portion retained by title insurance agent = $402.50
- Potential reduction in the risk premium for consumers due to negotiation of the title insurance agent's portion of the risk premium = Up to $402.50
- Final risk premium paid by the consumer = Between $172.50 and $575

Example 2 - Under the bill (restoring law prior to Butler case)

- Title insurance premium for $100,000 house = $575
- 30% portion retained by title insurer = $172.50
- 70% portion retained by title insurance agent = $402.50
- Potential reduction in the premium for consumers due to negotiation of the title insurance agent's portion of the premium = $0 (not allowed)
- Final premium paid by the consumer = $575

As illustrated above, the bill would remove the opportunity for negotiation of the title insurance agent's portion of the premium. In practice, however, it is more likely that the ability to negotiate will benefit purchasers of commercial property and other large transactions where the purchasers' bargaining power is greater.

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON INSURANCE:

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