

“Florida Butler Rebate – Discounted Title Insurance Costs”

(By: Theodore M. Simon, Esq. (8/7/16))

At Budget Title Agency, there are no “ifs,” “ands,” or “buts” about your cost of title insurance. Whether you are the property owner, buyer, or financier of a property buyer, title insurance protects your interests and prevents you from investing in a property that isn’t marketable or clear of liens or encumbrances.

The Butler Rebate: When a Florida developer, S. Clark Butler, challenged his insurance agent for refusing to negotiate title insurance premiums, with the agent claiming that the insurance laws of the State of Florida prohibited the discounting of title insurance costs, it ended up as a landmark case that went all the way to the Florida Supreme Court.

The result of the 2000 case is a “right to freely bargain,” which means that Florida buyers, property owners, and lenders now have the right to try to negotiate insurance premium rates with their insurance company. This case also gave rise to the pioneering Florida Butler Rebate, which gives Florida title insurance agents the option to offer the paying party rebates (discounting the cost of title insurance) on a percentage of the insurance premium.

Briefly, Butler stands for the following propositions:

- * The Florida Department of Financial Services must state insurance premium rates for title insurance, which is separate from settlement and closing rates.
- * Unlawful rebates from the title insurance company or agent are prohibited.
- * Thirty percent of the risk premium is guaranteed to the title insurance underwriter to cover “risk of loss and maintenance of other underwriter services. The remaining 70% is available to the title agent or attorney for its fee in providing primary title services. This agent or attorney share is negotiable and available for rebate as a settlement adjustment.

Although the State of Florida has anti-rebate statutes, the Butler Rebate effectively places an exception allowing any Florida title company to offer to return a portion of the premium paid for title insurance (Sec. 627.7711(b) Fla. Stat). The courts allowed for this exception because it is part of the insurance company’s performance and core title services.

The Florida Department of Financial Services (DFS), by means of its licensing authority, monitors and controls the affairs of non-attorney licensed title agents.

Attorneys, however, perform title and settlement services as a result of their license to practice law, and are governed by The Florida Bar's Rules of Professional Conduct. The DFS informs the agents acting under its licensing authority that they may not call rebates "discounts," thereby protecting its perceived ability to set insurance prices, but not so attorneys. In fact, and for all practical purposes, the "Butler Rebate" is, for all intents, discounted title insurance, and perceived as such by the party who is ultimately paying for the title insurance.

At Budget Title Agency, our practice on the Florida Butler Rebate is unlike that at other insurance companies, because we offer an up front "Butler Rebate" instead of waiting for you to ask about it. However, as mandated by law, the "promulgated rate" must be itemized on the settlement statement as the title premium, with the Butler Rebate appearing as a separate line item, even though immediately offset on the settlement statement. Semantically, whether technically a discount or a rebate is irrelevant, since it results in an immediate reduction in closing costs. Perhaps it should be referred to as an "instant rebate" which, to the consumer, is the same thing as a discount or price reduction, no matter what it may be called. If it walks like a duck and talks like a duck, most likely it is a duck!

The Florida Butler Rebate applies when signing the closing statement. Since Florida property owners historically pay more than in most other states, the Butler Rebate clearly takes on a significant role in cutting costs. You cannot be coerced into using the services of your realtor, affiliated insurance company, or lender. Title insurance is a necessary cost, but you have direct control over it because of the Butler Rebate.