

“Florida’s Current Regulatory Framework . . . for State’s Title Insurance Regulation”

By: Florida Office of Program Policy Analysis (9/08) (excerpted; citations omitted)

Consumer advocates and others have raised concerns relating to the limited public information that is available to assist consumers in making informed decisions about title insurance purchases.

Florida’s title insurance industry developed through several historical regulatory benchmarks:

The title insurance industry’s development in Florida is tied to statutory and administrative law as well as key judicial decisions.

Prior to 1954, only attorneys could process title transfers and issue opinions on the status of property titles. Insurers then issued policies based on these opinions. However, in 1954, the Florida Supreme Court ruled in the Cooperman case that corporations could issue title policies and supervise property transfers, holding that these activities did not constitute the practice of law and thus could not be limited to attorneys. The Legislature recognized and defined title insurance in 1959. In 1965, the Legislature gave the insurance commissioner authority to promulgate rates for title insurance premiums. This established the foundation for the state’s current regulation of title insurance, as much of the statutory history of title insurance relates to regulation of rates and establishing the qualifications and procedures for licensing and monitoring agents and insurers.

In 1992, the Legislature mandated the licensing of title agents and agencies unless the agents are direct employees of a registered title insurance company. The Legislature also allowed the Department of Insurance to establish limits on charges made by agents for title services.

In 2000, the Florida Supreme Court ruled in the Butler case that agents could rebate a portion of their income to their customers. The court held as unconstitutional any limits on the bargaining power of the consuming public. The court allowed title agents to rebate a portion of their payment, known as a “Butler Rebate,” to customers paying for title insurance but not to any other individuals involved in the transaction.

[As part of cabinet reform, Ch. 02-404, Laws of Florida , creates the Department of Financial Services to replace the Departments of Banking and Finance and Insurance (effective January 2003). The law divides the regulation of the title insurance industry between the new Office of Insurance Regulation under the Financial Services Commission and the Department of Financial Services.]

Pursuant to Ch. 07-44, Laws of Florida , the department can no longer establish limits on charges for closing services or the title search made in addition to the premium. Charges for the title search and other costs of closing must be shown separately on the HUD 1 closing statement. [This law of 2007 codified the "Butler decision of 2000, as follows: to allow title insurance agents and attorneys to return any portion of the agent's share of the premium or any other agent charge or fee to the person responsible for paying the related premium, charge or fee. The Florida Statutes still prohibit a licensee from paying for the referral of title insurance business.]

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Licensing of Agents

The department [of Financial Services] has the authority to license and regulate title agents and agencies that operate in the state. While individuals offering title insurance (except for attorneys) must have a title agent license, they work through title agencies that must also be licensed. The department licenses each title agency separately and each agency must have at least one licensed agent who can make policy determinations.

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The Florida Supreme Court regulates attorneys who process titles and offer title insurance. An estimated 6,000 to 7,000 attorneys offer title insurance services in Florida. State law exempts attorneys from title insurance licensing requirements. Instead, all attorneys including those whose services include title insurance are regulated by the Supreme Court, which oversees their admission to the bar as well as any disciplinary actions. The Supreme Court authorizes the Florida Board of Bar Examiners to apply criteria for bar admission and The Florida Bar Association carries out complaint investigations. The Supreme Court admits attorneys to the bar and, when necessary, takes disciplinary action such as suspension or revocation of an attorney's license to practice law based on the respective recommendations of the Board of Bar Examiners or the bar association.