

"Law Changes For Title Insurance"

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A State Supreme Court Ruling Now Allows Agents To Cut The Price Paid To Protect A Clear Title To A Deed.

Just weeks ago, a developer paid \$126,000 for title insurance to protect a \$61 million purchase of undeveloped land at Metro West in Orlando.

If the deal were done today, the insurance likely would cost considerably less.

A recent Florida Supreme Court decision has turned the title-insurance industry on its ear, opening the way for bargaining after four decades of prohibition.

The court said that barring title-insurance agents from offering rate reductions or rebates is unconstitutional.

The ruling is already having an effect.

For example, an Orlando-area lawyer handling both the legal work and insurance on a recent, \$43 million real estate deal did not reduce the cost of the title insurance -- but did agree to forgo \$25,000 in legal fees to get the insurance business.

Forfeiting the legal fee effectively reduced the cost of the title insurance from \$90,000 to \$65,000. Still the lawyer's cut of the premium: \$54,000.

Such price competition is expected to flourish because big dollars are at stake. In 1998, the latest year for which figures are available, property buyers paid more than \$883 million in title insurance premiums.

"This has really changed things," said Mark Findura, president of R.J. Twitty & Co., a Winter Park real-estate and mortgage-banking company.

Agents are expected to bargain by taking a smaller portion of the insurance premium as compensation. Attorneys, who have been getting two bites of the apple -- through legal fees and their share of the premium -- have multiple options. They can reduce or eliminate legal fees or cut their share of the premium.

A title insurance agent's cut of a premium is huge: 70 percent on deals valued to \$1 million; 65 percent on deals of more than \$1 million to \$5 million; and 60 percent for more than \$5 million. The law banning rebates was attacked in 1994 by Gainesville developer Clark Butler, who said he was being denied the right to negotiate a better price for title insurance.

In fighting Butler's lawsuit, the title industry argued that the insurance is a special type of coverage, with the agent actually validating or warranting the property title.

Opening the business to rebates could lead to poor underwriting by agents and potentially threaten the solvency of insurers, the industry said.

But the court said it's the responsibility of the Florida Insurance Department to see that the premiums paid to insurers are sufficient, said Tom Guilday, a Tallahassee lawyer who represented Butler.

Guilday said he expects large property buyers to benefit most from the court's ruling because of their financial clout. The big dollars involved in large real estate deals provide room for negotiating. That's much less so on smaller deals, such as home purchases.

But R. Norwood Gay III, general counsel to the Orlando-based Attorneys' Title Insurance Fund, the state's largest title insurer, thinks competition could become widespread and increase the level of risk.

"My biggest fear is agents will get into bidding wars and cut corners to the detriment of the underwriter," Gay said. "If a guy is dumb enough to rebate himself out of business, that's his business. I hope he doesn't take an underwriter or two with him."

Title insurance protects property buyers against ownership disputes or mistakes in the deed. Lenders require it when issuing a mortgage. Both lender and owner policies are available, but most title insurance is paid for by the buyer-borrower and protects the lender.

The Florida Land Title Association says it doesn't know how much is paid out in claims in any given year. That data is kept by individual underwriters, said Lee Huszagh, the association's executive secretary-treasurer.

The number of title-insurance claims is small. That's because title-insurance agents clear claims and validate a title before placing the insurance. Other forms of insurance are sold largely with the hope that nothing bad happens.

Last year, while Butler's case was pending, the Legislature removed a clause in the title-insurance law banning rebates.

But in deleting that section, the Legislature also removed a prohibition against discrimination.

Both the Insurance Department and the title insurance industry say the omission should be addressed by lawmakers next year.

Larry Furlong, senior vice president of Fidelity National Title Insurance, said other fees associated with real estate closings might rise if agents' cut of the title premiums is reduced. These other fees include charges for a title search, document preparation and the closing itself.

He said he hopes price wars don't erupt.

"The costs [of validating a title] are significant," he said.