

“Rebating of the Agent’s Premium Share – 2007 Law Revision, Florida Statutes - HR 111”

By: PROFESSIONAL STAFF, Florida House of Representatives (4/07) (excerpted)

NOTE: The bill, HR 111, was signed into law by Governor Crist, and is now “the law of the land.”

The premium for title insurance is divided between the title insurance company and the title insurance agent. The insurance company must receive at least 30% of the premium to cover risk. The agent may receive the remaining 70%; however, the agent is not allowed to lower or rebate the agent’s share of the premium. The bill repeals the prohibition against a title insurance agent rebating or lowering the agent’s share of the title insurance premium.

Title insurance agents provide services that are related to the closing of the real property transaction, but not part of the charge for the title insurance premium. Currently the agent may not charge less than actual cost for these services. The bill repeals the prohibition against an agent charging less than actual cost for closing services.

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Title Insurance Premiums

[I]n *Chicago Title Insurance Co. v. Butler*, the prohibition against an agent rebate or lowering the agent’s share of the title insurance premium was again found to be unconstitutional. Specifically, the [Florida Supreme] court found that the anti-rebate statutes infringe upon a citizen’s property rights and unconstitutionally restrict a citizen’s rights to freely bargain for services. Since the Legislature has guaranteed 30% of the premium to the title insurer for the sole purpose of ensuring industry solvency, the court found that the rebate of the agent’s share of the premium would not adversely impact the insurer’s solvency.

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In 1999, the Legislature specifically addressed the rebating of title insurance premiums. . . . *Chicago Title Insurance Co.* was not yet pending before the Florida Supreme Court . . . , but the state had received an unfavorable ruling in the circuit court. . . The law provided that 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 will repeal the prohibition on the rebate or lowering of the agent's share of the title insurance premium and will allow title agents to charge less than actual cost for closing services. [The law] is amended to remove the rebate or abatement of the agent's share of the premium from the list of activities that constitute unfair methods of competition and unfair or deceptive acts. Charging less than cost for related title services is also removed from the list. The prohibition against otherwise rebating premium remains in law. Additionally also allowed is the rebate or abatement of an attorney's fee charged for professional services or any other agent charge or fee. [The law] is amended to repeal the authorization of the Financial Services Commission by rule to establish limitations on related title services charges made in addition to the premium based upon the expenses associated with the services rendered and other relevant factors.

[The bill] provides definitions related to title insurance contracts. The bill amends the definitions of "related title services" and "primary title services."

"Related title services" are renamed "closing services" and "preparing or obtaining a title search" is removed from the list of services.

Closing services will not be considered part of the title insurance premium. Closing services can be rebated or lowered by the title agent.

"Primary title services" is amended to state that such services do not include closing services or title searches, for which a separate charge is or separate charges are made.

"Title search" is defined to mean the compiling of title information from official or public records.

The definition of "premium" is not amended. The definition continues to mean the charge that is made by a title insurer for a title insurance policy, including the charge for performance of primary title services by a title insurer or title insurance agent or agency, and incurring the risks incident to such policy "Premium" does not "include a commission." . . .

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Real Estate Settlement Procedures Act of 1974

The Real Estate Settlement Procedures Act, know as RESPA, is a federal law protecting consumers from abuses and usury that requires lenders to give homebuyers advance notice of closing costs, settlement costs, relationships and lending practices. 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). Congress specifically found that RESPA should provide:

- more effective advance disclosure to home buyers and sellers of settlement costs;
- the elimination of kickbacks or referral fees that tend to increase unnecessarily the costs of certain settlement services;
- 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
- significant reform and modernization of local record keeping of land title information.

The RESPA and the Federal Regulations 24 promulgated to implement the Act use the term "determine the insurability of the title" rather than "examination of the title." The bill amends [the law] to remove the phrase "examination of title." The determination of insurability will be based on sound underwriting practices and based upon an evaluation of a reasonable title search.

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D. FISCAL COMMENTS:

If title insurance agents discount their portion of the title insurance premium, there may be a reduction in insurance premium tax revenues.