

## **"Title Insurance Practices Probed"**

By: Randy Diamond (Tampa Tribune) (2/24/05)

TALLAHASSEE - State regulators say they are investigating more than 50 title insurance companies for paying illegal referral fees and other incentives to real estate agents to steer insurance business their way.

Such illegal incentives have become so widespread in Florida as to be considered common business practice in the title and real estate industries.

"It's become an epidemic," said Dean Andrews, a senior attorney with the Department of Financial Service's Division of Agents, referring to kickbacks in the title insurance industry.

The investigations, he said, are just skimming the surface of a pervasive statewide problem that may be hurting competition - and consumers.

State investigators say the crackdown has resulted in settlements with two title companies early last year, including one in Tampa. Neither company admitted wrongdoing in the settlement agreements but did agree to change their business practices. Investigators say they expect to make other cases public in the next few months.

Meanwhile, efforts to curb title companies from offering real estate agents incentives for business have been hampered by thin cooperation from the state agency that regulates real estate agents and brokers. It has shown little interest in disciplining professionals.

State records show that last May, Chief Financial Officer Tom Gallagher sought out the help of Diane Carr, the secretary of the Florida Department of Business and Professional Regulation. Her department oversees licensing of real estate agents and brokers.

"In the course of these investigations the Department has determined that it has become common practice for real estate agents, brokers, and agencies to expect, encourage or require title insurance agencies to reward them in different ways for referral of title insurance business," Gallagher wrote to Carr in a May 25 letter. He went on to ask that Carr's office discipline agents who have received compensation from title insurance companies.

But Carr's department never took any action other than to pledge to publish in a newsletter sent to the real estate industry a notice that state law bars title agencies from compensating real estate agents for referrals. That notice has not been published.

While state law prohibits title companies from paying referrals, Juana Watkins, acting director of the state Division of Real Estate, said it's permissible under the state's real estate regulations for agents to accept inducements, as long as they disclose them to the consumer. As long as they do so, she said, regulators have no authority to discipline agents. However, under federal housing and urban development regulations, referral fees are prohibited for anyone connected with a real estate closing. The rule applies to federally backed loans, which make up 97 percent of all real estate transactions.

Nina Bannister, a spokeswoman for Gallagher's office, said Gallagher would not comment. But, she said, Gallagher and other department officials are frustrated by the lack of action from Carr's office.

Although title agents, Realtors and others say the practice of accepting fees and other gratuities from title insurance agencies is commonplace in the industry, the practice goes on largely unnoticed by home buyers.

Financial institutions require buyers to have title insurance to protect against property ownership disputes.

Experts say the offering of incentives is driven by profit margins as high as 25 percent in the title insurance industry. As a result, some title agents don't mind giving real estate agents referral fees to keep business coming their way.

State regulators worry that the system of referral fees and other incentives crimps competition in the industry and hurts consumers who aren't told they should comparison shop to find the best deals on property settlement services. Such services include conducting a search of property records to make sure the title is clear of liens and other defects, and selling title insurance to protect homeowners against a flawed title search.

Some title company executives have complained that real estate agents frequently call them. Kevin Hussey, president of the Stewart Agency in St. Petersburg, said he is routinely contacted by real estate agents and brokers wanting to know what he'll pay for referral business.

"I'm afraid to pick up the phone," Hussey said. State investigators say they have uncovered several schemes designed to cloak illegal referral incentives. They include:

- \* Title insurance agents and real estate agents setting up shell companies claiming to provide title services, but actually serving only as conduits for referral fees.

- \* Title agencies paying advertising costs to promote home listings, furnishing office equipment to Realtors, and paying for cell phone minutes and gas cards.

- \* Title agents paying for vacations, fishing outings and other trips for real estate agents.

"Kickbacks have always existed to one degree or another. The point is, now they have become almost de rigueur in the title insurance and real estate industries," said Andrews, the senior attorney with the state.

Florida isn't the only state wrestling with the issue. Other states are looking at national insurance companies, which underwrite the title policies sold by local agents.

### **Problem National In Scope**

Colorado officials announced Monday that First American Title Insurance Co., one of the largest title insurance underwriters in the country, has agreed to refund about \$24 million to consumers nationwide for allegedly offering home builders, lenders and real estate agents kickback fees for referring title insurance business. First American admitted no wrongdoing in the settlement agreement.

And California's insurance commissioner said Tuesday that the state is investigating title insurance underwriters for the same practices.

Florida officials declined to identify the title companies under investigation. But Barbara Owens, the state's chief title insurance administrator, said the two cases settled last year illustrate some of the methods being used to conceal relationships between real estate agents and title companies.

In the first case, Owens said, Orlando title insurance company owner Reinhard Stephan formed a title insurance agency, Broker's Title of New Tampa. The state found the company did no title work but did pay fees primarily to real estate agent Annette Bohannon for referring business to another title company Stephan operated, Broker's Title of Tampa III, Andrews said. The state alleged that Stephan's company paid Bohannon \$15,000 over the course of several months for business referrals.

Bohannon said state officials never contacted her about the business relationship and says the payments were a legitimate return for her investment in Broker's Title of New Tampa, not for referrals. "We didn't take any referral fees. They were payments on our investment," she said. Bohannon said she always disclosed her relationship with the title company to clients. Stephan, who also denies any wrongdoing, paid a \$10,000 fine and signed a consent agreement in March, assuring the state that all his companies would operate as independent entities in the future. He says he was unfairly singled out by the state.

In the second case settled by Florida regulators, Anita Coleman Dana, a title agent based in the Orlando area, paid a \$2,500 fine after the state said she paid for thousands of dollars in real estate agents' advertising in exchange for referrals. Dana admitted no wrongdoing, but agreed to stop the practice, state records show.

Wally Senter, Florida's top title insurance regulator until he retired in 2002, said he believes that until the state starts disciplining real estate agents and brokers for demanding and accepting incentives, the practice will continue. While in office, Senter said, he warned title insurance company executives not to engage in compensating real estate agents and brokers for referring business their way. "I told them, 'You better not get into bed with the Realtors,'" Senter recalls saying "It will be never ending." He believes that if the state can stop kickbacks and other incentives, it would force title agents to compete on price and could result in title insurance rates dropping in Florida.