Florida Land Title Association

2012 Bulletin 10
DFS Agent Bill

Signed by Gov. Scott 5-4-12

HB 725 included the Department's major clean up of its licensing, approval, continuing education and operational framework. While most of the bill does not affect title agents directly, several provisions should be pointed out for their potential impact on title agencies and attorney-agents.

1. Restriction on Solicitation

Building on DFS' position that §626.112 Fla. Stat. prohibits an agency from paying its unlicensed marketing reps a commission which is based on the amount of premium or number of title insurance policies sold, HB 725 expands the longstanding prohibition on solicitation by an unlicensed person. Representing FLTA, Executive Director Alan Fields and Jim Russick of Old Republic met with DFS leadership and explained the problems with an absolute prohibition and its impact on marketing efforts to Realtors® and other third party referral sources. After much discussion, we were successful in narrowing the scope of the restriction. The final language of §626.0428(3) will read:

> (3) An employee of an agent or agency may not initiate contact with any person for the purpose of soliciting insurance unless licensed and appointed as an agent or customer representative. As to title insurance, an employee of an agent or agency may not initiate contact with any individual proposed insured for the purpose of soliciting title insurance unless licensed as a title insurance agent or exempt from such licensure pursuant to s. 626.8417(4).

While the restriction that only a licensed agent or exempt party (Attorney-agent or insurance company employee) may solicit an "individual proposed insured," will require some changes to our internal procedures, it should not be read as requiring every marketing rep calling on Realtors® mortgage lenders or other potential referral sources to be licensed. We would, however, suggest our members keep in mind DFS' interpretation of the premium split statute described above. FLTA members can find more information on that issue can be found in FLTA's 2011 Bulletin 10.

Surety Bond

FLTA was successful in working with DFS to transfer responsibility for tracking the current $35,000 surety bond from DFS to the respective underwriters. Under HB 725, your insurers will

confirm and report to DFS that you have a surety bond as part of the reappointment process, just as they currently do for the $50,000 fidelity bond.

Because of House procedural rules, we were unable to repeal the language requiring the DFS held bond, and instead house staff added some "notwithstanding" language which was intended to avoid creating a second bond requirement. We anticipate asking the legislature to clarify their intent not to require two bonds next session.

We will be working out the mechanics of making the transition to this new bond with the Department over the next few months.

Continuing Education

The Department had proposed requiring all lines of insurance agents to take 5 hours of their continuing education requirement in a single block from a single provider. We were successful in convincing them that this was an unnecessary burden on title insurance and that the current model worked fine. At the end of the process, title insurance agents were excluded entirely from this requirement, leaving us able to continue to take education 1 hour at a time, each from a different provider.

House Bill 725 tracks the language of the Data Call Bill (HB 643) which maintains the current requirement for 10 hours of C.E. every two years, but requires that our C.E. be in title insurance and escrow management specific to Florida. That is a change which will particularly impact non-resident agents who had been taking CE from other states. It also expands what courses will satisfy the 3 hour ethics requirement. Now courses on ethics, rules, compliance with state and federal regulations relating to title insurance and closing services will all count toward meeting your "ethics" requirements.

Agent in Charge & Working Out of Residence

The bill clarifies that the place of business standards do apply to title insurance which has been the interpretation of the Department for some time. That provision reads:

> **626.749 Place of business in residence.**—No requirement of this part that an agent maintain within this state a place of business which is accessible to the public shall be deemed to prohibit the maintenance of such a place of business in connection with the place of residence of either the agent or of other persons, if:
> (1) A separate room is set aside by the agent for, and is actually used as, the office or place of business;
> (2) Such room is easily accessible to the public and is in fact in the usual course of business used by the agent in his or her dealings with the public; and
> (3) The existence of such place of business is suitably advertised, as determined by the department.

Whether your underwriter will permit your sole office to be a back-bedroom is another question.

The bill also expressly stated that the provisions of §672.172 requiring agent in full-time charge do NOT apply to title insurance agencies.

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