



2012 Bulletin 11
The Data Call Bill
Signed by Gov. Scott 5-4-12

HB 643 and its public records companion HB 645 were FLTA's major initiative this session and we must thank Rep. George Moraitis and Sen. Thad Altman – and the entire title industry lobby team – for all of the hard work that went into getting it passed. The bill also included several provisions arising out of the recommendations of the Title Insurance Study Advisory Council.

The Data Call

The primary initiative in this bill was to update and clarify the authority for OIR to conduct a mandatory "Data Call" – a request of all agents and insurers to provide the detailed information necessary to properly set title insurance premiums in Florida. A data call has been authorized in Florida law for many years, but none have been effectively conducted. This led some to call for the abolition of our longstanding promulgated rate system in which the premium is split between agents and insurers. They argued that without good data about what it actually costs to do all of the work necessary to examine title, determine insurability, identify and cure defects, mitigate risks, and the many other things for which insurers and agents are paid out of the premium, the state regulators can't possible set an appropriate rate.

The bill requires each title insurance agency and insurer licensed to do business in this state and each insurer's direct or retail business in this state to maintain and submit information, including revenue, loss, and expense data, as the OIR determines necessary to assist in the analysis of title insurance premium rates, title search costs, and the condition of the title insurance industry in this state. This information must be transmitted to the office annually by March 31 of the year after the reporting year.

The bill allows the DFS to deny, suspend, revoke, or refuse to renew or continue the license or appointment of any title insurance agent or agency for failure to timely submit data as required by the data call.

A separate bill, HB 645, makes the information submitted under the data call (unless otherwise available to the public) exempt from disclosure under Florida's public records act.

To implement the bill, the industry has been working closely with OIR and DFS to create the detailed information points that must be provided in an annual data call. A dedicated group of agents and insurers have volunteered a huge amount of their time on this project. More about that process can be found in the [Summer 2011 Newsletter](#) and the [June 2011 Newsletter](#). This group recognizes that it is a major challenge to gather enough detailed information to properly set premiums without over-burdening smaller agencies.

The process we currently envision will be for the working group to continue their work with OIR & DFS to finalize what the data call is going to look like, and then FLTA will work with the various software vendors to (hopefully) get much of the data capture built into their systems. We've modeled the Florida data call after the NAIC model data call in order to facilitate that software integration. Once that form has been finalized (probably about the same time we'll be facing the New(er) and Improved(er) HUD-1), FLTA will start actively educating our members on the requirements and compliance issues.

At the end of the process, no-one will be totally happy with the result. The Data Call – which is mandatory for agencies and insurers under the statute – will be “a pain in the neck” even after involving closing software providers to track key datapoints. It's bitter medicine, but will make for a stronger, healthier industry and agency network in the long run.

This portion of the bill takes effect July 1, 2012.

Continuing Education

While the total CE hours required for a title agent over a two year reporting cycle remains at 10, the bill requires that the courses be title insurance and escrow management specific to this state. The current requirement for 3 hours of “Ethics” CE was clarified to allow courses on the subject matter of ethics, rules, or compliance with state and federal regulations relating specifically to title insurance and closing services.

This portion of the bill becomes effective October 1, 2014, and applicable to compliance periods beginning on or after that date. So once effective, title agents will no longer be permitted to take courses from unrelated lines of insurance (auto, health, life, etc.) to meet their continuing education requirements, and non-resident title agents will need to include Florida specific courses as part of their CE.

Attorney Trust Accounts

The bill requires an attorney to deposit and maintain all funds received in connection with transactions in which the attorney is serving as a title or real estate settlement agent into a separate trust account that is maintained exclusively for funds received in connection with such transactions and permit the account to be audited by its title insurers.

The Florida Bar has approved permitting title insurers to audit under these limited circumstances, and ruled that it is not a violation of the duty of confidentiality. See [Ethics Opinion 93-5](#). However both the bill and the ethics opinion recognize that the client may specifically direct that their funds be kept in a general trust account not subject to audit. This portion of the bill will be effective July 1, 2012.

Approval of Forms

The bill requires the Office of Insurance Regulation to approve or disapprove a policy or other form within 180 days after receipt. When the office approves any form, it will determine if the current rate in effect applies or if the coverages of that policy form require separate rate-making.

The bill clarifies -- what many thought was implicit in the authority to approve forms -- that OIR has authority to withdraw approval for obsolete forms, and adds a 180 days' notice requirement.

The bill expressly provides that no insurer may achieve a competitive advantage over any other insurer, agency, or agent as to rates or forms. If a form or rate is approved for an insurer, OIR is directed to “expeditiously approve” submissions by other insurers whose submission contains identical coverages, rates, and deviations. This portion of the bill takes effect July 1, 2012.

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