

Review Your Lender Closing Instructions Carefully

Representatives of the title insurance industry regularly meet with officials from the Florida Office of Insurance Regulation (“OIR”) and the Florida Department of Financial Services (“DFS”) regarding the regulation of the industry. These meetings focus primarily on forms, rules, and related industry matters.

At a recent meeting, OIR officials focused comments on Sec. 626.9541(1)(a), F. S. That provision reads in pertinent part, "(1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS.– The following are defined as unfair methods of competition and unfair or deceptive acts or practices: (a) *Misrepresentations and false advertising or insurance policies.*– Knowingly making, issuing, circulating, or causing to be made, issued, or circulated, any . . . statement . . . which: 1. Misrepresents the benefits, advantages, conditions, or terms of any insurance policy."

OIR noted that some lender's general closing instructions require the title agent to make assurances about coverage that may not comply with Florida law, specifically Sec. 627.777, F.S., or Chapter 690-186, F.A.C. Affirmative coverage was cited as an area of concern.

For example, one major lender requires in their general lender closing instructions the following:

Express affirmative coverage against loss is required in connection with each exception which adversely affects the property, such as easements, encroachments, violations of restrictions, common walls, overhang of eaves, porches, decks, roofs, etc.

OIR officials indicated that the title agent that assents to such a closing instruction and agrees to give affirmative coverage over any easement otherwise excepted on Schedule B is possibly misrepresenting the terms of the policy that will ultimately be issued to the lender because such coverage cannot be given. While the facts of a given title will control the final analysis, rarely are those available at the time the general loan closing instructions are presented. There was further discussion about the possibility that the requesting lender may violate the statute by making an inappropriate demand.

While we are unaware of any specific instances of enforcement by OIR or DFS against title agents or attorneys, OIR has taken this position against casualty insurance agents that alter a homeowner policy binder or Evidence of Property Insurance (“EPI”) to indicate to the lender that the policy covers "full replacement costs" or similar words that misrepresent the actual coverage.

The practice take away should be apparent. Pay attention to both general and special loan closing instructions and negotiate adjustments as appropriate. Failure to do so may result in substantial penalties under Sec. 626.9541, F.S. to both you and the requesting lender.

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