

Q & A

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OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

State Regulatory Update

■ *Scott Pierce*

Senior Vice President and Florida State Manager

On November 15, 2005, the Office of Insurance Regulation (OIR) held a workshop in Tallahassee for the express purpose of reviewing the provisions of the promulgated rule dealing with title insurance rates. As a predicate to the meeting, OIR published a data call to the underwriters doing business in Florida. That data call, coupled with the nature of the statements and inquiries made by OIR officials, is cause for very serious concern for all Florida title insurance agents.

More specifically, agents should be aware that the OIR has questioned the current rate structure and has implied that rates are too high. They have questioned the role and function of agents and have

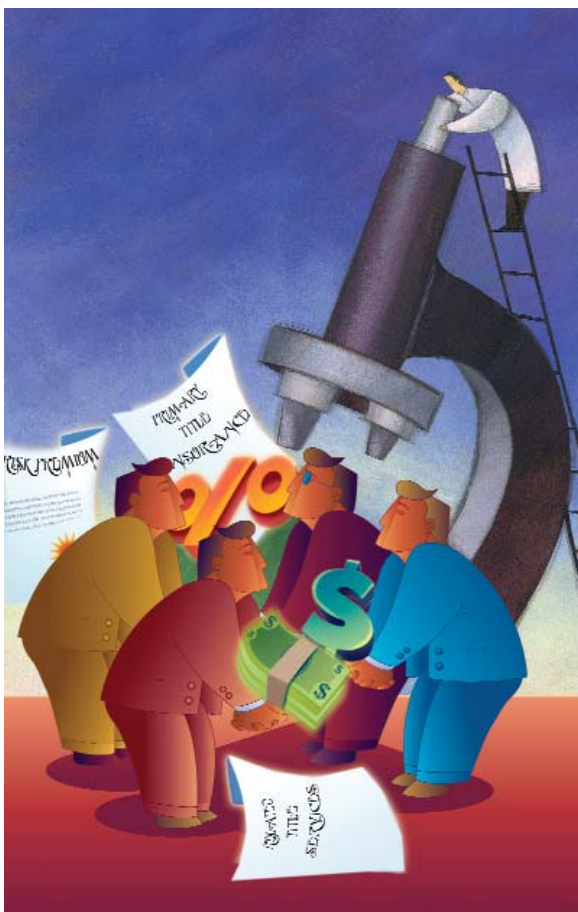
generally ignored the Florida statute that requires OIR to consider agent profitability in setting rates. OIR officials have questioned the basic statutory scheme by expressing difficulty in reconciling the concepts of

“primary title services,” “related title services,” and “risk premium.”

Open speculation of the need to both lower rates and cap rates for search, exam and closing services was articulated by OIR general counsel.

Old Republic National Title Insurance Company operates in Florida only through agents. Your success is our primary concern since agents are our exclusive delivery system. Accordingly, Old Republic has advocated that a data call of underwriters only, without economic data collected from agents, violates Florida law. In this regard, please see the letter from our State Counsel, Jim Russick, to Mr. Prentiss of OIR, contained herein.

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In The Title C



State Regulatory Update

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As we go to press for this edition of *In the Title Corner*, it is unclear what OIR will do with the flawed, inadequate and irrelevant data required of the insurers. I can assure you that we will keep you informed of significant developments.

I want to thank those of you who responded to our suggestion to contact OIR on this matter. We received many well-considered and superbly written letters that you sent to OIR. I also want to thank each of you for choosing Old Republic Title as your underwriter and for understanding that your support of underwriters who compete with you for business is in direct conflict with the best interests of your business.

LETTER REFERRED TO IN ABOVE ARTICLE



COMMENTS:

We invite your feedback and welcome your suggestions regarding *"In The Title Corner"* and the publication of future articles. Address correspondence to:

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December 6, 2005

Via Fax To 850-922-2543 & U.S. Mail

Robert A. Prentiss, Esq.
Assistant General Counsel
Office of Insurance Regulation
200 East Gaines Street
Tallahassee, FL 32399-4026

Re: November 8, 2005 Title Insurance Rules Workshop

Dear Mr. Prentiss:

Old Republic National Title Insurance Company would, first, like to thank the Office of Insurance Regulation for initiating a review of title insurance rates in Florida. We firmly believe that a proper data call, coupled with an in depth understanding of the title insurance business model and statutory scheme, will better serve the industry and consumers of the State of Florida.

Old Republic National Title Insurance Company is unique among the major commercial title insurers doing business in Florida. Our business is transacted exclusively through independent title insurance agents and agencies. Some are corporate and some are attorney agents, but together they constitute the essential delivery system that motivated the Florida legislature to pass statutory protections for this group of primarily small business men and women.

We have reviewed the record of the workshop on title insurance rates held in Tallahassee on November 8, 2005 and are, frankly, very disturbed. The comments and questions from your office gave the listener the sense that not only does your office believe that title insurance rates are too high, but that title insurance agents specifically should bear the primary burden of any reductions. No testimony was elicited in the interests of title insurance agents, a deficiency that is untenable.

Mr. Parton opened the workshop with a statement that "OIR regulates insurers, not agents." We would submit that this is in direct contradiction with Section 627.728, Florida Statutes. In that statute the legislature stated:

"(2) In adopting premium rates, the commission must give due consideration to the following: (b) a reasonable margin for underwriting profit and contingencies..., sufficient to allow title insurers, *agents, and agencies* to earn a rate of return on their capital that will attract and retain adequate capital investment in the title insurance business and *maintain an efficient title insurance delivery system.*" (Emphasis added).

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New Underwriting Counsel

■ *Scott Pierce, Senior Vice President*

Old Republic Title is pleased to announce that Suzanne Zimmerman Barry has joined our Florida underwriting staff. Suzanne comes to us with a strong background in real property law and title insurance, having 10 years experience as a claims attorney and an underwriter for three previous insurers, most recently Lawyers/Commonwealth/Land America.

Suzanne received her B.S. from Radford University and her J.D. from Washburn University Law School. She is a member of the Kansas Bar, the Florida Bar and the Real Property, Probate and Trust Law Section.

Suzanne will be located in our Tampa office and is immediately available to assist our agents.

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The legislature has mandated that the Office consider agent and agency profitability. Accordingly, OIR is in the business of regulating agents as well as insurers. The current data call fails to recognize this responsibility.

Mr. Parton's substantive remarks noted that the Office was disturbed by three issues: (1) captive reinsurance agreements; (2) sham affiliated business arrangements; and (3) the litigation against the Florida Department of Revenue over premium taxes. He implied that all of these matters were evidence that title insurance rates are too high in Florida.

The first of these issues was the captive reinsurance agreements entered into by some underwriters with builders and developers. The apparent logic here is that rates are too high if *insurers* are willing to funnel premium dollars back to their customers for the referral of business. Old Republic Title would like to point out that no legitimate title insurance agency was involved with any of these scams. Rather, title agencies were the victims of a lack of regulatory enforcement. These actions were by certain insurers who were willing to sacrifice the interests of their agents for the profit of their direct operations. Their philosophy – cut out the agent's percentage and funnel only a portion of that premium back to the developer. This is not evidence that rates are too high. For the record, Old Republic Title wishes to state that it has no such captive reinsurance agreements anywhere in the country. And we find it improper that these agreements are cited as evidence of rates that are too high when no such agreements have been disclosed in Florida. Activities in Colorado, California, and Arizona in this regard are irrelevant to the setting of rates in Florida.

Sham affiliated businesses are a problem and Old Republic Title would like to express its appreciation to the Office on behalf of the legitimate agents throughout the state for your recent enforcement efforts. But your investigation is not evidence that rates are too high. No legitimate title agent or agency was involved in any of the arrangements for which Fidelity National Title was sanctioned. It would appear that these shams were a way for Fidelity to earn more than 30% of the title insurance premium at the expense of legitimate agents everywhere. Old Republic Title would urge you to follow through with sanctions on Fidelity Title's unlawful business partners. Only enforcement against the transgressors, not lower title insurance rates for agents, will rid the marketplace of these illegal sham arrangements. We oppose any restrictions on legitimate affiliated businesses.

We have undertaken a detailed review of the litigation filed by Fidelity National Financial and their wholly owned affiliates, Chicago Title Insurance Company, Ticor Title Insurance Company, and National Attorneys Title Insurance Company against the Florida Department of Revenue (DOR) alleging that premium tax is not due on that portion of the title insurance premiums earned by agents. Old Republic Title patently disagrees with their position and supports the DOR. The agents' percentage of the premium is not a "commission" as was alleged in the Butler litigation and by your Office's

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Raymond O. Denham Memorial Award Goes to Jim Russick

Jim Russick, Florida State Underwriting Counsel, was recently awarded the Raymond O. Denham Memorial Award for "outstanding and unselfish service to the Association, to the abstract and title professions and to the public" at the annual Florida Land Title Association convention. Jim is one of only 31 title professionals in Florida to have received the award.

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representative. It is premium that is very much earned by legitimate title insurance agents. Because this argument is so contrary to Florida's regulatory scheme, it is not proper to cite this litigation as evidence that title insurance rates are too high. It is merely evidence of one title group's prejudice toward direct operations at the expense of the best interests of agents. It is also a lack of appreciation for the legislative intent to protect title agent's premiums.

Rather than cite these events and conclude that rates are too high, it would be more appropriate to perfect the data call. Rate making should be based on solidly gathered, legitimate data collected by OIR. There was some discussion regarding the collection of data from agents through the underwriters. Old Republic Title believes that this idea will not work. As was indicated at the workshop, most independent agents represent multiple underwriters. There would need to be a mechanism to preclude multiple reporting. But more fundamentally, many agents write for underwriters with direct operations that compete with them such as the First American group (includes Talon and United General), the Fidelity group (Ticor, Chicago, American Pioneer), Land America Financial (Lawyers Title and Commonwealth Land Title). It would be grossly inappropriate to require an independent title insurance agent to disclose confidential business information to their competitor.

For similar reasons it is not proper for OIR to collect data from independent agents directly. Unless the data could be protected from the Sunshine provisions of our statutes, the data would be available to any competitor. Previously, this problem was solved by the then Department of Insurance hiring an independent actuary to collect and compile the data and report the results. Old Republic Title strongly recommends the same approach.

The current data call is insufficient and we would incorporate by reference and concur with the testimony of Mr. Bob Shear given at the November 8, 2005 workshop. While we understand from comments at the workshop that the current data call is only the beginning, Old Republic Title would like to take this opportunity to highlight certain deficiencies. First, there is no data from agents. Without data from agents, there cannot be compliance with Section 627.782, Florida Statutes. Additionally, there is no data requested regarding mortgagee policies. And fundamentally, there is no data regarding the cost of production of the title insurance product.

During the course of the workshop, it was indicated that the Office is considering a "cap" on related title services. There was also an acute interest in title insurance rates in other jurisdictions. It was openly questioned why title insurance rates are lower in many other states. We believe that if the proper data is collected, it will show that there is a direct correlation between title insurance rates and related title service fees. We believe the data will show that the total cost to the consumer for transactions of the same size will be roughly equivalent in different states. There is a cost to the delivery of the product, and if there is a reduction in rates and a cap on related title services the result to agents in Florida may be catastrophic. Such a two pronged approach to rate reduction would be anti-small business.

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RANDE K. YEAGER

Old Republic National Title Insurance Company President and CEO **Rande K. Yeager** has been installed as President of the American Land Title Association for the 2005-2006 term. Mr. Yeager was installed at the ALTA's annual meeting which took place in New York City the first week of October.

He is responsible for operations of the Old Republic Title Insurance Group including Old Republic National Title Insurance Company, Mississippi Valley Title Insurance Company, American Title Guarantee Company, Old Republic Title Company and other subsidiaries of Old Republic National Title Holding Company. He joined Old Republic 17 years ago after spending 12 years with TICOR, in Denver. Mr. Yeager holds an undergraduate degree in Psychology from Westminster College in Fulton, Missouri and an MBA in Finance from Regis University in Denver, Colorado.

All of Old Republic's New Jersey agents and employees extend their best wishes and warmest regards for a productive and successful tenure in office.

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We wish to emphasize that title insurance is a unique form of indemnity coverage with a long liability tail purchased for a one time premium. The bulk of the premium is earned by the risk elimination process. This process involves not only the examination of title and the clearing of underwriting objections, but also by the careful scrutiny of the entire transaction. The extension of liability to the insurers through creative lender closing instructions places the closing agents in a critically important position in the entire process.

The importance of the rate review process cannot be overstated given the critical role that title insurance plays in the state and national economy. Lenders now spread risk and renew loan capital by packaging the majority of their loan originations and selling them in the secondary market. No loan sold to FNMA or any other secondary market purchaser is marketable without a title insurance policy attached that meets the lender's requirements regarding insuring provisions and allowable exceptions. The amount of money involved in real property transaction in Florida is a staggering amount that is vital to the Florida economy. There can be no doubt of the legislature's wisdom when they passed provisions to protect the financial viability of both title insurers and their delivery mechanism, title insurance agents. The rate review process is vital. It is overdue. And it must be accomplished dispassionately based on valid data supported by an in depth understanding of the title insurance business for the protection of all Floridians.

When we reflect upon the reasons cited for a rate reduction, we note that all three issues involved insurers. To cite these instances as a basis for reducing rates by lowering the agent's income makes no sense, and we believe that a proper data call will support a stronger rate structure than would appear contemplated by the Office.

Thank you for your consideration of these critical matters.

Sincerely,

James C. Russick
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Florida State Counsel
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JCR/smb

cc:Florida Financial Services Commission
Governor Jeb Bush
Attorney General Charlie Crist
Chief Financial Officer Tom Gallagher
Commissioner of Agriculture Charles Bronson



Ask Your Underwriter

■ *Linda M. Hernandez, Florida State Underwriter*

Question: Many of the title agents in our area charge more than the promulgated rate for title insurance. Aren't all title companies supposed to charge the same title premiums?

Answer: Absolutely! Title insurance rates are set by the Department of Financial Services and apply to all underwriters and their agents. The Department's Rules, as set forth in the Administrative Code, clearly state what the rates SHALL be.

The only exceptions permitted under those rules are for reissue, substitution, and first sales out of the builder. The reissue rate is available when the seller in a buy/sell transaction provides the agent with a copy of his owner's policy that is three (3) years old or less or, in the case of a borrower, when the borrower provides the agent with a copy of it, regardless of age. The substitution loan rate is also available under limited circumstances—when the same borrower and the same lender make a "substitution" loan covering the same property or, in the case of a mortgage over \$250,000.00, when the same borrower makes a "substitution" mortgage on the same property with any lender. For first sales out of a builder of residential property with one to four family improvements, the rules provide for a discount equal to the amount of premium paid for any prior loan policy on the property. Other than these, there are NO exceptions to the rules.

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