

To: All Florida Old Republic Title Agents

From: James C. Russick
Florida State Counsel

Date: March 1, 1999

Re: S. Clark Butler v. State of Florida, Department of Insurance,
Case No: 94-1428, Leon County Circuit Court

On Friday, February 26, 1999, the trial court judge in the Butler case entered a summary judgment in favor of the Plaintiffs.

For those of you who do not recall, this is the case wherein a large developer and the Florida Home Builders Association sued the Department of Insurance seeking a declaratory judgment that the anti-rebate provisions of the Florida statutes and related administrative code were unconstitutional. The trial court agreed with this contention and stated, "The legislative provisions and administrative rule challenged here are declared unconstitutional as violative of Article 1, Section 9, of the Florida Constitution and the Defendant, Department of Insurance, is enjoined from enforcing the same." In other words, the court found these provisions to violate the due process clause of the state constitution which states, in part, that no person shall be deprived of life, liberty or property without due process of law.

This decision is not final. Several of the defendants/intervenors have indicated that they plan to appeal the decision. Until the case is final, all agents should understand that rebating of any portion of the title insurance risk rate premium is still prohibited under Sec. 626.9541(1)(h)3.a, F.S.

This gives added importance to the title insurance revision bill that has been filed in the legislature as House Bill 403 and Senate Bill 746. It is designed to clarify statutorily the services that a title agent performs to earn their portion of the premium.

In a related matter, we have been informed that the Department of Insurance workshop to consider the Department's proposed 9% rate cut in title insurance premiums has been **postponed** from the original date of March 25, 1999. The new date has not been finalized, but will most likely be April 5th or 6th.

Old Republic Title will continue to keep all agents apprised of this important case as it unfolds. Should you have any questions with regard to this case, please do not hesitate to contact us.