

TO: All Florida Agents

FROM: Scott Pierce
Senior Vice President

DATE: March 3, 1999

RE: Senate Bill 1530

Within the last week, we have notified you of two important issues facing the title industry in Florida. The first was the announcement of the Department of Insurance to decrease premium rates in Florida by nine percent, and the second was the decision by the Leon County Circuit Court in the Butler case.

Now we have learned of a bill that has been introduced in the State Senate, known as Senate Bill 1530, that appears to change the statutes to require the Department of Insurance to promulgate a "risk rate only" premium for title insurance. This risk premium would be entirely retained by the underwriters. It also requires each underwriter to establish a title insurance rate, a portion of which would be paid to the agents as a "commission for solicitation of the policy and performing administrative tasks." It would appear that this rate and the corresponding percentage to be paid to the agents could be different from one underwriter to the next and could be changed annually. Fees charged for search, examination and closing appear not to be affected by this proposal.

In light of this Senate Bill and the results of the Butler litigation, at this time we do not know the Department's intentions regarding the proposed nine percent rate reduction. No date has been set for the Department's earlier proposed workshop on the rate reduction.

I have attached an edited summary of the bill for your review. Please read this as soon as possible and call either Jim Russick, Linda Hernandez, Mike Davis or myself with your comments.

SP/cmw

EDITED SUMMARY OF SENATE BILL 1530

627.782 Adoption of rates.—

(1) Subject to the rating provisions of this code, the department must adopt a rule specifying the risk premium ("Risk premium" means the charge, as specified by rule of the department, that is made by a title insurer for the assumption of the risk, under the several classifications of title insurance contracts and forms, and upon which charge a premium tax is paid under s. 624.509. As used in this part or in any other law, with respect to title insurance, the words "premium" or "risk premium" mean only the risk premium as defined in this section and do not include any other charge related to title insurance.) **to be charged in this state by insurers for the respective types of title insurance contracts. The department must also adopt rules incident to the applicability of the risk premium, including rules to ensure that the insurer retains the entire risk premium for policies sold by agents.**

(2) In adopting the risk premium, the department must give due consideration to the following:

- (a) The insurers' loss experience and prospective loss experience under insured closing service letters, search and examination services, and policy liabilities.**
- (b) A reasonable margin for underwriting profit and contingencies, including contingent liability under s. 627.7865, sufficient to allow insurers to earn a rate of return on their capital that will attract and retain adequate capital investment in the title insurance business.**
- (c) Past expenses and prospective expenses for administration and handling of risks.**
- (d) Liability for defalcation.**
- (e) Other relevant factors.**

(3) In accordance with the rating provisions of this chapter, each title insurer shall establish and use a title insurance rate ("Title insurance rate" means the amount charged by the title insurer for insuring or guaranteeing titles to real property or interests in real property. The term includes the risk premium charged by the insurer for assumption of the risk created by the issuance of the policy and any charge made by the title insurer or title agent in connection with solicitation or issuance of the policy. [*Charge made by a title insurer or title agent for solicitation and issuance of the policy* means the amounts retained by the title insurer or agent as a commission for solicitation of the policy, performing administrative tasks in connection with issuing binders and policies, and providing underwriting information to the insurer.]), **rating schedule, or rating manual that allows the title insurer a reasonable rate of return on each policy of title insurance issued in this state. A copy of the rates, rating schedules, and rating manual must be filed with the department at least annually. The department shall review the rate or rate change to determine whether the rate is excessive, inadequate, or unfairly discriminatory. In making that determination, the department shall, in accordance with generally accepted and reasonable actuarial techniques, consider the following factors:**

- (a) The promulgated risk premium;
 - (b) The past and prospective expenses related to policy solicitation and issuance;
 - (c) The degree of competition among insurers for the risk insured;
 - (d) The adequacy of loss reserves;
 - (e) Investment income; and
 - (f) Other relevant factors that affect the severity of claims and expenses.
- (4) Rates may be grouped by classification or schedule and may differ as to class of risk assumed.
- (5) Rates may not be excessive, inadequate, or unfairly discriminatory.
- (6) The rate applies to each \$100 of insurance issued to an insured.
- (7) The risk premium rates apply throughout this state.
- (8) The department shall, in accordance with the standards provided in subsection (2), review the insurance rate, including the risk premium and the related title services charges ("Related title services" means services performed by a title insurer or title insurance agent, including, but not limited to, preparing or obtaining title information, title search and examination, preparing documents necessary to close the transaction, conducting the closing, or handling the disbursing of funds related to the closing in a real estate closing transaction in which a title insurance binder, commitment, or policy is to be issued. At least the actual cost of providing the service must be charged the person or entity receiving the benefit of the service) **as needed, but not less frequently than once every 3 years, and shall, based upon the review required by this subsection, revise the risk premium if the results of the review so warrant.**
- (9) The department may, by rule, require insurers under this part to annually submit statistical information, including loss and expense data, as the department determines to be necessary to analyze the title insurance rate, including the risk premium and the condition of the title insurance industry.