

To: All Florida Agents
From: Underwriting Department
Date: September 15, 1999
Re: State of Florida, Department of Insurance vs. Keys Title and Abstract Co.

The First District Court of Appeals has just rendered its preliminary opinion (subject to a motion for rehearing) in the Keys Title and Abstract case.

You may recall that this case began when the Florida Department of Insurance issued its title insurance data call. A response was required of licensed title companies but was voluntary as to attorney agents. Keys Title and Abstract sued the Department alleging that the disparity in treatment between attorney and corporate title agents constituted a violation of the equal protection clause of the Florida constitution. The circuit court agreed with the plaintiff. Therefore, there has been no recent data call from the Department.

The First DCA has just overturned the trial court in a very interesting decision. Specifically, the court held that ". . . the legislature had a rational basis to limit the application of section 627.782(8) to non-lawyer title insurance agents." The court went on to say, "The issue is not whether the statute distinguishes one class of persons from another. Here . . . the statute plainly does make such a distinction. The question the court must answer is whether the distinction is one that is proper, given the purpose of the statute."

The court then made an extremely important statement. It said, "In the present case, there can be no doubt that the statute serves a legitimate purpose. It enables the Department of Insurance to make informed decisions regarding the premium rates for title insurance."

The Court clearly implies that the Department of Insurance cannot set rates or protect the present rate structure without the data necessary to support its actions. ***This point is of critical importance to all agents.*** Data submission is necessary to support the existing premium structure in Florida.

We emphasize this fact because of anticipated agent reaction to the need to compile economic data and submit it to the Department. Yes, it is burdensome. Yes, it has become more burdensome by the form and format of some of the questions. Yes, there will likely be disagreement in the interpretation of the data (as demonstrated by the Department's 9% rate reduction initiative earlier this year). These are all very legitimate issues that need to be addressed. Nevertheless, what's important to understand is that, by implication, the court has said that without this data, the agent's portion of the premium is unsupported.

The Court makes a further point regarding the value of the data received from licensed title agents. It summarily concludes that such data is "more accurate" than data received from an attorney agent because of the mixed business performed by most attorneys. This places a unique importance on the data from licensed, non-attorney agents which benefits **all agents** -- corporate or attorney.

Keys is not yet final. As of this writing, Keys Title and Abstract has the opportunity to seek a rehearing. There is also the possibility of a further appeal to the Florida Supreme Court. Old Republic will make every effort to keep all agents informed of any further significant developments in this case.