

# **NOTICE**

To: Old Republic Agents and Offices  
From: Underwriting Department  
Re: Butler Litigation Update  
Date: November 7, 2000

The Florida Land Title Association annual meeting that concluded Friday witnessed significant discussions on issues relating to the Butler litigation and agent rebating of their portion of the title insurance premium. No definitive conclusions were reached. It appeared from the underwriters in attendance at the meeting that they would not support rebating at this time.

The Governmental Affairs Committee did agree to reconvene at a special meeting on November 13, 2000, for the purpose of making recommendations to the board on the proper direction for the Association to proceed. This delay is designed to promote as much agent input as possible into the decision making process during the brief time available to pre-file a bill with our legislature.

The Supreme Court's decision does not provide any methodology or guidelines for the agent to rebate up to 70% of its share of the risk rate premium. Rebating can be "wide open" and discriminatory. Thus, it is believed that some controls need to be put in place. Any statutory changes would likely not take effect prior to July, 2001.

Currently, there is one legislative proposal before the committee. It is an effort to imitate the response that the life insurance industry found effective after the case of Department of Insurance v. Dade County Consumer Advocate's Office, 492 So.2d 1032 (Fla. 1986), which declared the anti-rebate statute unconstitutional as it related to life insurance agents' premiums. Their rationale was simple. If rebating is legal, a uniform and fair way of rebating should be established by the legislature. The result was Section 626.572, F. S. That section established criteria that was so difficult to meet that no rebating of life insurance agent premiums has occurred in Florida.

The proposed Section 627.7805, F.S. adopts the same concept. The main points of the proposed legislation are as follows:

- An underwriter would have to give approval in order for its agents to rebate. Approval would mean that all agents could rebate if they so choose.

- Each agent would set and post in their office their own rebate schedule in their office and file it with their underwriter(s) that allowed rebating. The proposal is silent about requiring underwriters' approval of the rebating schedule and about how often an agent may amend the schedule.
- If an agent chooses to post and file a rebate schedule, the agent would have to rebate to all customers in accordance with that schedule, whether the customer asked for a rebate or not. Rebating could not be discriminatory.

This proposal has proven to be quite controversial. While some agents have viewed this proposal as a buffer to the total deregulation of the title insurance agent's premium structure, other agents have argued that it would not let them compete effectively in the marketplace. Many of the agents who spoke at the FLTA forum on the morning of November 3, 2000, were against the proposed statute and preferred to allow market forces to dictate pricing for our services and products.

As with any proposed legislation, there is no guarantee that the end result will be what the authors of the bill intended. In the past, we have seen this happen a number of times with title insurance-related legislation.

Old Republic National Title Insurance Company is soliciting further input. We believe that there will be a renewed recommendation by the Department's actuary to adopt a risk rate only premium structure before the current title premium legislation sunsets in 2002. This would mean a rollback of the current premiums and a requirement that the insurer retain this new risk only premium. Not only would this have a dramatic impact on agent's revenues, but we are also concerned that such a structure may raise some unauthorized practice of law issues for licensed agents where there is no retention of at least a portion of the title insurance premium. These concerns suggest that agents take both a short and long-term view of these issues.

This is not intended as an exhaustive outline of the various issues that have been raised. Rather, it is designed to both inform and solicit your input into issues we believe may have a fundamental impact on how agents will function in the marketplace.

Please help us help you, the title insurance agent. Please fax your comments, thoughts, and ideas to Scott Pierce at 813-223-3401 or e-mail him at [spierce@oldrepmatl.com](mailto:spierce@oldrepmatl.com) before November 9<sup>th</sup> so that we may integrate them into our response at the next Governmental Affairs Committee meeting of the FLTA.