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BULLETIN

FLORIDA BULLETIN 08-01

To: All Old Republic National Title Agents and Offices

From: Underwriting Department

Re: Further Clarification of HB 111 – **CLOSING FEES**

Date: February 29, 2008

In ORT Bulletin 07-11 and in the last issue of our newsletter, we wrote about the October 1, 2007, Florida Department of Financial Services Bulletin DFS-12-2007 and the need for clarification on several issues. You will recall that this DFS bulletin set forth some rather sweeping modifications regarding how each agent is required to aggregate all “closing service” charges as then newly defined in *Sec. 627.7711, F.S.*

The Florida Land Title Association (FLTA) made written inquiry with, and recently received a response from, DFS dated February 8, 2008 (attached). Additionally, representatives of the FLTA, including myself, have had additional dialogue with DFS representatives. Accordingly, we now have a better understanding of DFS’s position on the issues set forth below.

The Closing Fee: Last year, House Bill 111 created a new definition for “closing services.” “Closing services” now means “**SERVICES PERFORMED BY A LICENSED TITLE INSURER, TITLE INSURANCE AGENT OR AGENCY, OR ATTORNEY AGENT IN THE AGENT’S OR AGENCY’S CAPACITY AS SUCH, INCLUDING, BUT NOT LIMITED TO, 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 COMMITMENT OR POLICY IS TO BE ISSUED.**”

DFS then stated that all closing service fees should be aggregated into a single fee to be shown on Line 1101 of the HUD-1 Settlement Statement. DFS has two primary goals with this direction. They want to eliminate surprise charges on the closing statement and they want to make it easier for the consumer to shop and compare fees between providers. While both are laudable goals, as we reported in our last issue of *In the Title Corner*, the initial directives from DFS left several issues unclear. DFS has now clarified some of its positions, particularly with regard to third party fees.

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DFS interprets the applicable statute, 627.7711, F.S., to distinguish between “fees incurred for completing any part of the closing services to transfer title to the new owner” and the “completion of services related to the loan.” Services related to the loan are legitimate third party fees such as monies due the mortgage broker, realtor, surveyor, and express mail fees necessary to pay off the prior lender to secure the priority of a new mortgage. This list is demonstrative, not exhaustive, but it is clear that all such proper third party fees must be set out separately on the HUD-1. This is true even on a refinance closing.

Distinguish this from fees that more directly fall within the realm of what is generally necessary to perform a closing to transfer title to the property. Fees such as an “escrow fee,” “disbursement fee,” “processing fee,” or “post closing fee” are improper individual fees and must be part of the single, aggregate “closing fee” shown on Line 1101 of the HUD. So must fees related to the closing function such as a “storage fee,” or “scanning fee,” as these are also improper to separately charge. Please note that even in a refinance, these types of fees must be part of the aggregate “closing fees,” and cannot be separately set out on the HUD-1.

DFS has stated that they recognize that there are often outside contract closers utilized to handle a transaction. Further, they acknowledge that an agent often does not know at the time that they are required to quote their fees if a contract closer will be required. These facts notwithstanding, it is the unequivocal position of DFS that no separate contract closing or notary fee may be charged. Such fees must be absorbed in the aggregate closing fee set forth on Line 1101 of the HUD-1.

We have already seen a significant increase in closing fees in the Florida marketplace because of this aggregation requirement, but not an increase in overall costs to the consumer. Some agents have explained the change very successfully with their repeat customers by showing the breakdown of all the services that are included in the aggregated closing fee on a separate sheet. This is entirely proper under either DFS or RESPA and can be done as an additional page to the HUD-1.

Equal Footing: The FLTA also asked DFS to address these interpretations with the Florida Office of Insurance Regulation, as the regulator for the underwriters. While we have nothing directly from OIR, DFS has stated that OIR concurs with the DFS position. Accordingly, the direct operations run by other underwriters are required to follow the same rules.

Interplay with Federal Regulations: FLTA also requested DFS to address how their guidelines are affected by federal regulation. There were primarily two questions here, the compliance with RESPA’s HUD-1 preparation rules and the impact that the closing fee has on the Truth-in-Lending (TILA) calculations. The first issue has not yet been addressed because DFS is waiting for HUD’s response. However, Old Republic Title anticipates that HUD will not find the DFS rules in conflict with theirs.

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The Truth-in-Lending issue is more complicated and focuses on the impact that the closing fee has on the TILA calculations. DFS believes that as a general rule, the TILA calculation is not impacted by the closing fee. The exception to this rule would be in situations where the closing agent is an affiliated business of the lender or, alternatively, the closing agent has been designated by the lender. In any event, it is the DFS position that this does not create an exception to the requirement to aggregate closing fees.

Conclusion: We have done our best to summarize our communications with DFS, but it is impossible to set out every specific situation you may encounter. We anticipate many agents will have additional questions with regard to various fees that they have been charging or that their competition may have adopted. ORT will do its best to address these, but understand that there may be the need to refer you to DFS. Please give our Underwriting Department the first opportunity to assist you.