



UNDERWRITING BULLETIN

From: Florida Underwriting Department
Date: September 6, 2010
Bulletin No: FL-10-9
Name: **Regulatory Compliance; Simultaneous Issue; Reissue Rates & Discounts**

While this has been the subject of prior bulletins from most underwriters, a recent conversation with some of the enforcement staff in the Department of Financial Services (DFS) indicates that not all agents have gotten the message. Audits are still turning up problems and substantial fines are being assessed against agents caught in violation.

Here are some of the things that DFS has apparently been looking at in their audits.

1. **Not Remitting Timely.** It always sounds self serving when we say this -- but that appearance must be balanced against the regulatory headaches we have seen it cause our agents. Each agent is required under the regulations to remit to its insurer at least monthly. Until remitted, these funds should be maintained in your trust account (not your operating account). Under DFS rules, these are collected funds subject to the accountability provisions of 690-186.003(9)(a). F.A.C. Fines have been assessed for not remitting timely and maintaining the underwriter share of premium in the escrow account.
2. **Failure to give Reissue Rates, New Home Purchase Discount, and Substitution Loan Rates to ALL who Qualify.** These are NOT optional discounts, and charging the full rate when a lower rate is specified is viewed as a violation. The discount is not dependent on the owner specifically asking for a discount. If you have any reason to suspect the customer may qualify for the lower rate, explain to your customer what they need to do in order to qualify for that rate, and work with them to get the necessary information.
3. **Promulgated Rates are NOT “Minimums”.** For many years we did have “Minimum Promulgated Rates” and that terminology has been slow to leave the lexicon. But since 1987, the promulgated rates in Florida are “THE” rates that must be charged (although you may rebate a portion of the promulgated premium pursuant to the Butler decision). They are not “Minimums” or “Suggestions.” It has been more than 20 years, and we continue to be amazed by how often this question is asked.

Give the appropriate rate in every case. They are not minimums. This type of overcharging has been challenged by the Department, so please be sure that everyone in your office understands this point.

4. **Failure to Remit 30% of the Premium Actually Charged to your Underwriter.** Again, we know this sounds self serving, but we don't want our agents in regulatory hot water. As you know, \$25.00 is the minimum premium for a simultaneous issue of a lenders policy (690-186.003(5) F.A.C.). Certain endorsements have either minimum charges or a range of permissible charges. DFS views anything you charge above the minimum for a simultaneous policy or endorsement as part of the "Premium" and you must remit at least 30% of the amount you actually charge to your underwriter.

You do not pay just on the minimum. You pay your underwriter on what you actually charge as a Simultaneous Issue Premium or for endorsements having a promulgated minimum.

However, if you elect to increase your closing fee to reflect the added costs of handling a simultaneous mortgage closing (and provide that to the lender for inclusion in the GFE), no portion of that is shared with the underwriter.

5. **Unauthorized Charges.** In 2007, changes to Florida law were interpreted by our regulators to prohibit making any charges for title services paid to a title insurer or title agency other than:
 - a. Premium
 - b. Title Search (which for most agents will be a pass through expense); and
 - c. Closing Services (denominated as such)

Even though the administrative code has not been updated to eliminate the requirement for an "examination" charge, the change in the statute is viewed as prohibiting it.

The statutory change did not prohibit the collection of charges and expenses actually paid to third parties as part of the settlement (sometimes referred to as "pass through items)."
Examples include recording fees, doc stamps, survey charges, taxes, delivery service fees, etc.

Since that time, the new HUD-1 rules went into effect requiring even more items to be consolidated into lines 1101 and 1102 of the HUD. (although more detailed breakouts may be provided in an addendum and required for certain lenders. See WFG Bulletin 10-7)

The Department reports that they are still seeing improper fees and charges on closing statements. So limit your charges to the approved categories.

6. **Marking Up Charges without Providing Additional Services.** Charging a customer more than what a third party provider charges you for any service is prohibited by RESPA unless it falls into one of the narrow categories (like Fed-Ex charges) for which average cost charges are permitted. The Department reports that they are seeing agents who are "marking up" their charges for searches and other services.

Our agents play a vital role in the Title Insurance Industry and the protection of the Consumer. It is in our collective best interest to work with the Department to assure that everyone is complying with the rules and regulations governing our industry. If we are not in compliance ourselves, we have no

credibility when we ask for changes, or insist on consistent enforcement. Please join with us in this effort.

If you have questions about any of this, please call your WFG Underwriter.

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