



UNDERWRITING BULLETIN

To: All Florida Agents of WFG National Title Insurance Company

From: WFG Florida Agency Department

Date: June 19, 2014

Bulletin No.: FL 2014-11

Re: HB 633 - Insurance Agents and Agencies

Almost every year, the Department of Financial Services proposes some changes to Florida Statutes relating to the regulation of Insurance Agents and Agencies. This year's bill, [HB 633](#), was passed unanimously by both the House and Senate, and was signed into law by Governor Scott on June 13, 2014 (Laws of Florida 2014-123). Along with provisions applicable to other lines of insurance, the bill included provisions applicable to title agents and agencies.

The main change applicable to title agents and agencies is that effective January 1, 2015, this bill will require each place of business established by an agent or agency to be "in the active full-time charge of a licensed and appointed [title insurance agent]." New §626.0428(4)(a).

The bill goes on to provide that the licensed agent in charge of the agency "may also be the agent in charge of additional branch office locations" so long as no activities requiring licensure⁽¹⁾ goes on unless a licensed agent (as phrased, this is not necessarily the agent in charge) is present. New §626.0428(4)(b). For a number of years, the Department has declined to approve a branch location without naming a unique agent in charge, so it is unclear if this policy will change.

We want to stress that our interpretation, about business being conducted with a licensed agent other than the agent in charge on premises, is one with which the Department may disagree. The interpretation is based on the reference to "an agent" not "the agent" and to "unlicensed persons" in new §626.0428(4)(b).(2)

Attorneys in good standing with the Florida Bar are exempt from the licensing and appointment requirements, so may presumably qualify as the agent in charge of a branch office, and will otherwise be subject to those rules.

The bill also adds new §§626.0428(4)(c) – (f) which further expand on the duties and responsibilities of the agent in charge. However when read in conjunction with revised §626.8411(1)(b) it seems these provisions do not apply to title insurance agents or agencies.

Subsections (d) and (e) are particularly problematic from a title office management standpoint, because they make the agent in charge responsible for the supervision of all individuals working in that agency

location, regardless of whether the agent in charge handles a specific transaction or deals with the customer or funds. Subsection (e) makes the agent in charge accountable for any misconduct or violations of the Insurance Code committed by anyone under their supervision (everyone in that office). It does qualify that the agent in charge will not be held criminally liable for an act they didn't personally commit unless they knew or should have known of the act and the facts constituting a violation.

Notwithstanding the language of §626.8411(1)(b), we have concerns that the Department will attempt to apply subsections (c) – (f) to title agencies, because frankly, those provisions are at the heart of the agent in charge concept.

A different section of the bill, which will take effect July 1, 2014, requires the Department to immediately and automatically suspend a license or appointment when a licensee is charged with a felony of the first degree; a capital felony; a felony involving money laundering, fraud, or embezzlement; or a felony directly related to the financial services business. The suspension continues if they are found guilty, or plead guilty or nolo contendere to the crime, regardless of whether a judgment or conviction is entered, and during any appeals.

This bill includes many other provisions applicable to other lines of insurance and the operation of the Department.

1 Exactly which functions of a title agency may only be performed by a licensed title insurance agent is not as clear under our statutes as we might like.

- It is clear that only a licensed and appointed agent (or an attorney-agent exempt from licensure and appointment) may countersign a commitment, policy or endorsement. §626.841.
- Only a licensed agent (or exempt attorney-agent) may "initiate contact" with an "individual proposed insured" for the purpose of soliciting title insurance. §626.0428.
- And title insurance may be "sold" only by a licensed title insurance agent employed by a licensed title insurance agency or employed by a title insurer. §626.8412(1)(a); however what specific actions constitute the sale of title insurance is not further clarified.
- Determination of insurability may be made by a licensed agent or other employees of the agency. §626.8412(1)(b).
- While there is express approval for a licensed title agent to engage in business as an escrow agent as to funds to be disbursed in connection with real estate closing transactions (§626.8473(1)), because of poor drafting in §877.101, Florida Statutes do not contain a general prohibition on others acting in that role – only in using the name "escrow" or advertising those services. That section specifically authorizes financial institutions, attorneys, law firms and real estate licensees to also perform those escrow functions.

2 The pertinent language of the bill reads:

(b) Notwithstanding paragraph (a), the licensed agent in charge of an insurance agency may also be the agent in charge of additional branch office locations of the agency if insurance activities requiring licensure as an insurance agent do not occur at any location when an agent is not physically present and unlicensed employees at the location do not engage in insurance activities requiring licensure



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