



# ALERT

To: All Old Republic Title Agents and Offices

From: Underwriting Department

Date: February 14, 2019

Re: DFS Guidelines REVISED & REPLACED

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Today, the Florida Department of Financial Services *revised and replaced* their recent guidance posting for title agents regarding third party fees and closing service fees.

This new guidance is a significant advancement founded upon discussions with representatives from the Florida Land Title Association. It would appear to condone business as usual provided that there is proper disclosure to the consumer and no junk fees.

The Florida Land Title Association has a follow up meeting scheduled with key representatives of DFS on February 22nd to seek a refined understanding of this guidance. Jim Russick will be in attendance and provide any necessary updates thereafter. Should you have any questions or concerns, please email Jim at [jrussick@oldrepublictitle.com](mailto:jrussick@oldrepublictitle.com) and he will endeavor to provide answers as soon as possible.

Attached is the newly posted guidance or go to the definition of Title Insurance Agency Fees posted on the DFS website at <https://www.myfloridacfo.com/division/agents/compliance/TitleAgents.htm>.

The Alert dated February 11, 2019 is withdrawn and replaced with this Alert dated February 14, 2019.

\* \* This Bulletin should become a permanent part of your records to assist in your compliance with the requirements contained herein. \* \*

Please **provide a copy of this Bulletin to your staff** so they can read it and become aware of its contents.

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Please call the Underwriting Department if you have any questions.

## Compliance Information: Title Insurance Agents

### TITLE INSURANCE AGENCY FEES

The Department of Financial Services (Department) is often asked to advise if certain fees are allowable and where these fees are to be recorded on the closing disclosure and/or HUD settlement forms. The Department can answer these concerns very simply:

1. The Florida Department of Financial Services does not regulate the amount of each fee charged as part of a closing.
2. These forms were developed by the Consumer Financial Protection Bureau (CFPB). Questions about how to complete these forms should be directed to the CFPB at [www.consumerfinance.gov](http://www.consumerfinance.gov).

The Department is charged with making sure Florida consumers are not deceived by our licensees when they purchase title insurance and close on a property.

As part of any inspection or investigation done, the Department will verify at a minimum that the title insurance agent, or agency:

- Charged the correct premium for the title insurance policy and each of the policy's endorsements.
- Allocated the premium payment to the proper party as stated in the sales contract.
- Deposited the funds for the transaction in a separate bank account, as required by §626.8473, F.S.
- Disbursed the escrow funds as specified in the sales contract, settlement statements, and any other escrow agreement(s).
- Charged the consumer the same fees the agency advertised or told the consumer would be required to close on the property.
- Satisfied the problems discovered during the title searches as required by the title insurer.
- Met all the requirements to assure title is transferred to the new owner, properly, as outlined in the closing documents and sales contracts.

The Florida Statutes defines "closing services" as the service provided 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. These are activities that reduce the future liability of the title insurer by making sure the closing was conducted suitably, the correct people signed the appropriate forms, all existing liens were identified and discharged or excluded from coverage, the property was properly identified, existing loans were satisfied, and the new documents were recorded timely in the proper venue.

The Florida Insurance Code does not require the title agent, or agency, to meet these requirements on its own. Title agencies are permitted to hire outside parties to assist in the completion of these duties. When a title insurance agency does this, it must also include these fees in with its closing services fee that it advertises to the public and that it reports to the Office of Insurance regulation (OIR) in its data filing for that year.

Title agencies are permitted to charge the third-party fees as separate line items as long as the consumer has been notified these fees represent responsibilities of the agency, which were contracted to a third party. The consumer must also understand these fees will be charged to them either as part of the closing services fee total, or in addition to the agency's closing services fee. However, in no case should a third-party fee be charged to a consumer in a deceptive or misleading manner. Irrespective of how these fees are charged, the Florida Insurance Code will hold the title agency and its agent in charge responsible for the work product of the vendors selected and/or hired by the agency to perform any services that fall under *closing services*, *primary title services*, or the *title search*, regardless of which party to the transaction pays for these services.

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