6. TITLE INSURANCE & REGULATORY LAW
PDF Supplement

- 12 U.S.C., Ch. 27 – Real Estate Settlement Procedures Act (RESPA)
- 12 C.F.R., Pt. 1024 (Reg. X) (selected sections including App. B – Illustrations of Requirements of RESPA)
- 12 C.F.R., Sec. 1026.36(a) (Reg. Z – Loan Originator)
- Sec. 626.9541(1)(h)(3), Fla.Stat.
- Rule 69B-186.010, F.A.C.
- Florida Dept. of Fin. Services FAQs
- Secs. 627.7711; 627.7845, Fla.Stat.
- R. Regulating Fla. Bar Rule 4-5.7, Responsibilities Regarding Nonlegal Services

CHAPTER 27—REAL ESTATE SETTLEMENT PROCEDURES (sections 2601 to 2617)

Sec. 2601. Congressional findings and purpose
Sec. 2602. Definitions
Sec. 2603. Uniform settlement statement
Sec. 2604. Home buying information booklets
Sec. 2605. Servicing of mortgage loans and administration of escrow accounts
Sec. 2606. Exempted transactions
Sec. 2607. Prohibition against kickbacks and unearned fees
Sec. 2608. Title companies; liability of seller
Sec. 2609. Limitation on requirement of advance deposits in escrow accounts
Sec. 2610. Prohibition of fees for preparation of truth-in-lending, uniform settlement, and escrow account statements
Secs. 2611 to 2613. Repealed.
Sec. 2614. Jurisdiction of courts; limitations
Sec. 2615. Contracts and liens; validity
Sec. 2616. State laws unaffected; inconsistent Federal and State provisions
Sec. 2617. Authority of Bureau

§2601. Congressional findings and purpose

(a) The Congress finds that significant reforms in the real estate settlement process are needed to insure that consumers throughout the Nation are provided with greater and more timely information on the nature and costs of the settlement process and are protected from unnecessarily high settlement charges caused by certain abusive practices that have developed in some areas of the country. The Congress also finds that it has been over two years since the Secretary of Housing and Urban Development and the Administrator of Veterans' Affairs submitted their joint report to the Congress on "Mortgage Settlement Costs" and that the time has come for the recommendations for Federal legislative action made in that report to be implemented.

(b) It is the purpose of this chapter to effect certain changes in the settlement process for residential real estate that will result-

(1) in more effective advance disclosure to home buyers and sellers of settlement costs;

(2) in the elimination of kickbacks or referral fees that tend to increase unnecessarily the costs of certain settlement services;

(3) in a reduction in the amounts home buyers are required to place in escrow accounts established to insure the payment of real estate taxes and insurance; and

(4) in significant reform and modernization of local recordkeeping of land title information.

(Pub. L. 93–533, §2, Dec. 22, 1974, 88 Stat. 1724 .)

§2602. Definitions

For purposes of this chapter-

(1) the term "**federally related mortgage loan**" includes any loan (other than temporary financing such as a construction loan) which-

(A) is secured by a first or subordinate lien on residential real property (including individual units of condominiums and cooperatives) designed principally for the occupancy of from one to four families, including any such secured loan, the proceeds of which are used to prepay or pay off an existing loan secured by the same property; and

(B)(i) is made in whole or in part by any lender the deposits or accounts of which are insured by any agency of the Federal Government, or is made in whole or in part by any lender which is regulated by any agency of the Federal Government, or

(ii) is made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by the Secretary or any other officer or agency of the Federal Government or under or in connection with a housing or urban development program administered by the Secretary or a housing or related program administered by any other such officer or agency; or

(iii) is intended to be sold by the originating lender to the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, or a financial institution from which it is to be purchased by the Federal Home Loan Mortgage Corporation; or

(iv) is made in whole or in part by any "creditor", as defined in section 1602(f) [1] of title 15, who makes or invests in residential real estate loans aggregating more than $1,000,000 per year, except that for the purpose of this chapter, the term "creditor" does not include any agency or instrumentality of any State;

(2) the term "**thing of value**" includes any payment, advance, funds, loan, service, or other consideration;

(3) the term "**Settlement services**" includes any service provided in connection with a real estate settlement including, but not limited to, the following: title searches, title examinations, the provision of title certificates, title insurance, services rendered by an attorney, the preparation of documents, property surveys, the rendering of credit reports or appraisals, pest and fungus inspections, services rendered by a real estate agent or broker, the origination of a federally related mortgage loan (including, but not limited to, the taking of loan applications, loan processing, and the underwriting and funding of loans), and the handling of the processing, and closing or settlement;

(4) the term "**title company**" means any institution which is qualified to issue title insurance, directly or through its agents, and also refers to any duly authorized agent of a title company;

(5) the term "**person**" includes individuals, corporations, associations, partnerships, and trusts;

(6) the term "**Secretary**" means the Secretary of Housing and Urban Development;

(7) the term "**affiliated business arrangement**" means an arrangement in which (A) a person who is in a position to refer business incident to or a part of a real estate settlement service involving a federally related mortgage loan, or an associate of such person, has either an affiliate relationship with or a direct or beneficial ownership interest of more than 1 percent in a provider of settlement services; and (B) either of such persons directly or indirectly refers such business to that provider or affirmatively influences the selection of that provider;

(8) the term "**associate**" means one who has one or more of the following relationships with a person in a position to refer settlement business: (A) a spouse, parent, or child of such person; (B) a corporation or business entity that controls, is controlled by, or is under common control with such person; (C) an employer, officer, director, partner, franchisor, or franchisee of such person; or (D) anyone who has an agreement, arrangement, or understanding, with such person, the purpose or substantial effect of which is to enable the person in a position to refer settlement business to benefit financially from the referrals of such business; and

(9) the term "**Bureau**" means the Bureau of Consumer Financial Protection.

(Pub. L. 93–533, §3, Dec. 22, 1974, 88 Stat. 1724 ; Pub. L. 94–205, §2, Jan. 2, 1976, 89 Stat. 1157 ; Pub. L. 98–181, title I [title IV, §461(a)], Nov. 30, 1983, 97 Stat. 1230 ; Pub. L. 102–550, title IX, §908(a), (b),

Oct. 28, 1992, 106 Stat. 3873 , 3874; Pub. L. 104–208, div. A, title II, §2103(c)(1), Sept. 30, 1996, 110 Stat. 3009–400 ; Pub. L. 111–203, title X, §1098(1), July 21, 2010, 124 Stat. 2103 .)

§2603. Uniform settlement statement

(a) Disclosure for mortgage loan transactions

The Bureau shall publish a single, integrated disclosure for mortgage loan transactions (including real estate settlement cost statements) which includes the disclosure requirements of this section and section 2604 of this title, in conjunction with the disclosure requirements of the Truth in Lending Act [15 U.S.C. 1601 et seq.] that, taken together, may apply to a transaction that is subject to both or either provisions of law. The purpose of such model disclosure shall be to facilitate compliance with the disclosure requirements of this chapter [1] and the Truth in Lending Act, and to aid the borrower or lessee in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures. Such forms shall conspicuously and clearly itemize all charges imposed upon the borrower and all charges imposed upon the seller in connection with the settlement and shall indicate whether any title insurance premium included in such charges covers or insures the lender's interest in the property, the borrower's interest, or both. The Bureau may, by regulation, permit the deletion from the forms prescribed under this section of items which are not, under local laws or customs, applicable in any locality, except that such regulation shall require that the numerical code prescribed by the Bureau be retained in forms to be used in all localities. Nothing in this section may be construed to require that that part of the standard forms which relates to the borrower's transaction be furnished to the seller, or to require that that part of the standard forms which relates to the seller be furnished to the borrower.

(b) Availability for inspection; exceptions

The forms prescribed under this section shall be completed and made available for inspection by the borrower at or before settlement by the person conducting the settlement, except that (1) the Bureau may exempt from the requirements of this section settlements occurring in localities where the final settlement statement is not customarily provided at or before the date of settlement, or settlements where such requirements are impractical and (2) the borrower may, in accordance with regulations of the Bureau, waive his right to have the forms made available at such time. Upon the request of the borrower to inspect the forms prescribed under this section during the business day immediately preceding the day of settlement, the person who will conduct the settlement shall permit the borrower to inspect those items which are known to such person during such preceding day.

(c) Disclosure of fees

The standard form described in subsection (a) may include, in the case of an appraisal coordinated by an appraisal management company (as such term is defined in section 3350(11) of this title), a clear disclosure of-

(1) the fee paid directly to the appraiser by such company; and

(2) the administration fee charged by such company.

(Pub. L. 93–533, §4, Dec. 22, 1974, 88 Stat. 1725 ; Pub. L. 94–205, §3, Jan. 2, 1976, 89 Stat. 1157 ; Pub. L. 104–208, div. A, title II, §2103(g)(1), Sept. 30, 1996, 110 Stat. 3009–401 ; Pub. L. 111–203, title X, §1098(2), title XIV, §1475, July 21, 2010, 124 Stat. 2103 , 2200.)

§2604. Home buying information booklets

(a) Preparation and distribution

The Director of the Bureau of Consumer Financial Protection (hereafter in this section referred to as the "Director") shall prepare, at least once every 5 years, a booklet to help consumers applying for federally related mortgage loans to understand the nature and costs of real estate settlement services. The Director shall prepare the booklet in various languages and cultural styles, as the Director determines to be appropriate, so that the booklet is understandable and accessible to homebuyers of different ethnic and cultural backgrounds. The Director shall distribute such booklets to all lenders that make federally related mortgage loans. The Director shall also distribute to such lenders lists, organized by location, of homeownership counselors certified under section 1701x(e) of this title for use in complying with the requirement under subsection (c) of this section.

(b) Contents

Each booklet shall be in such form and detail as the Director shall prescribe and, in addition to such other information as the Director may provide, shall include in plain and understandable language the following information:

(1) A description and explanation of the nature and purpose of the costs incident to a real estate settlement or a federally related mortgage loan. The description and explanation shall provide general information about the mortgage process as well as specific information concerning, at a minimum-

(A) balloon payments;

(B) prepayment penalties;

(C) the advantages of prepayment; and

(D) the trade-off between closing costs and the interest rate over the life of the loan.

(2) An explanation and sample of the uniform settlement statement required by section 2603 of this title.

(3) A list and explanation of lending practices, including those prohibited by the Truth in Lending Act or other applicable Federal law, and of other unfair practices and unreasonable or unnecessary charges to be avoided by the prospective buyer with respect to a real estate settlement.

(4) A list and explanation of questions a consumer obtaining a federally related mortgage loan should ask regarding the loan, including whether the consumer will have the ability to repay the loan, whether the consumer sufficiently shopped for the loan, whether the loan terms include prepayment penalties or balloon payments, and whether the loan will benefit the borrower.

(5) An explanation of the right of rescission as to certain transactions provided by sections 125 and 129 of the Truth in Lending Act [15 U.S.C. 1635, 1639].

(6) A brief explanation of the nature of a variable rate mortgage and a reference to the booklet entitled "Consumer Handbook on Adjustable Rate Mortgages", published by the Director, or to any suitable substitute of such booklet that the Director may subsequently adopt pursuant to such section.

(7) A brief explanation of the nature of a home equity line of credit and a reference to the pamphlet required to be provided under section 127A of the Truth in Lending Act [15 U.S.C. 1637a].

(8) Information about homeownership counseling services made available pursuant to section 1701x(a)(4) of this title, a recommendation that the consumer use such services, and notification that a list of certified providers of homeownership counseling in the area, and their contact information, is available.

(9) An explanation of the nature and purpose of escrow accounts when used in connection with loans secured by residential real estate and the requirements under section 2609 of this title regarding such accounts.

(10) An explanation of the choices available to buyers of residential real estate in selecting persons to provide necessary services incidental to a real estate settlement.

(11) An explanation of a consumer's responsibilities, liabilities, and obligations in a mortgage transaction.

(12) An explanation of the nature and purpose of real estate appraisals, including the difference between an appraisal and a home inspection.

(13) Notice that the Office of Housing of the Department of Housing and Urban Development has made publicly available a brochure regarding loan fraud and a World Wide Web address and toll-free telephone number for obtaining the brochure.

(14) An explanation of flood insurance and the availability of flood insurance under the National Flood Insurance Program or from a private insurance company, whether or not the real estate is located in an area having special flood hazards, and the following statement: "Although you may not be required to maintain flood insurance on all structures, you may still wish to do so, and your mortgage lender may still require you to do so to protect the collateral securing the mortgage. If you choose to not maintain flood insurance on a structure, and it floods, you are responsible for all flood losses relating to that structure.".

The booklet prepared pursuant to this section shall take into consideration differences in real estate settlement procedures that may exist among the several States and territories of the United States and among separate political subdivisions within the same State and territory.

(c) Estimate of charges

Each lender shall include with the booklet a good faith estimate of the amount or range of charges for specific settlement services the borrower is likely to incur in connection with the settlement as prescribed by the Bureau. Each lender shall also include with the booklet a reasonably complete or updated list of homeownership counselors who are certified pursuant to section 1701x(e) of this title and located in the area of the lender.

(d) Distribution by lenders to loan applicants at time of receipt or preparation of applications

Each lender referred to in subsection (a) shall provide the booklet described in such subsection to each person from whom it receives or for whom it prepares a written application to borrow money to finance the purchase of residential real estate. The lender shall provide the booklet in the version that is most appropriate for the person receiving it. Such booklet shall be provided by delivering it or placing it in the mail not later than 3 business days after the lender receives the application, but no booklet need be provided if the lender denies the application for credit before the end of the 3-day period.

(e) Printing and distribution by lenders of booklets approved by Bureau

Booklets may be printed and distributed by lenders if their form and content are approved by the Bureau as meeting the requirements of subsection (b) of this section.

(Pub. L. 93–533, §5, Dec. 22, 1974, 88 Stat. 1725 ; Pub. L. 94–205, §4, Jan. 2, 1976, 89 Stat. 1158 ; Pub. L. 102–550, title IX, §951, Oct. 28, 1992, 106 Stat. 3892 ; Pub. L. 111–203, title X, §1098(3), title XIV, §1450, July 21, 2010, 124 Stat. 2104 , 2174; Pub. L. 112–141, div. F, title II, §100222, July 6, 2012, 126 Stat. 934 ; Pub. L. 113–89, §13(b), Mar. 21, 2014, 128 Stat. 1026 .)

§2605. Servicing of mortgage loans and administration of escrow accounts

(a) Disclosure to applicant relating to assignment, sale, or transfer of loan servicing

Each person who makes a federally related mortgage loan shall disclose to each person who applies for the loan, at the time of application for the loan, whether the servicing of the loan may be assigned, sold, or transferred to any other person at any time while the loan is outstanding.

(b) Notice by transferor of loan servicing at time of transfer

(1) Notice requirement

Each servicer of any federally related mortgage loan shall notify the borrower in writing of any assignment, sale, or transfer of the servicing of the loan to any other person.

(2) Time of notice

(A) In general

Except as provided under subparagraphs (B) and (C), the notice required under paragraph (1) shall be made to the borrower not less than 15 days before the effective date of transfer of the servicing of the mortgage loan (with respect to which such notice is made).

(B) Exception for certain proceedings

The notice required under paragraph (1) shall be made to the borrower not more than 30 days after the effective date of assignment, sale, or transfer of the servicing of the mortgage loan (with respect to which such notice is made) in any case in which the assignment, sale, or transfer of the servicing of the mortgage loan is preceded by-

(i) termination of the contract for servicing the loan for cause;

(ii) commencement of proceedings for bankruptcy of the servicer; or

(iii) commencement of proceedings by the Federal Deposit Insurance Corporation or the Resolution Trust Corporation for conservatorship or receivership of the servicer (or an entity by which the servicer is owned or controlled).

(C) Exception for notice provided at closing

The provisions of subparagraphs (A) and (B) shall not apply to any assignment, sale, or transfer of the servicing of any mortgage loan if the person who makes the loan provides to the borrower, at settlement (with respect to the property for which the mortgage loan is made), written notice under paragraph (3) of such transfer.

(3) Contents of notice

The notice required under paragraph (1) shall include the following information:

(A) The effective date of transfer of the servicing described in such paragraph.

(B) The name, address, and toll-free or collect call telephone number of the transferee servicer.

(C) A toll-free or collect call telephone number for (i) an individual employed by the transferor servicer, or (ii) the department of the transferor servicer, that can be contacted by the borrower to answer inquiries relating to the transfer of servicing.

(D) The name and toll-free or collect call telephone number for (i) an individual employed by the transferee servicer, or (ii) the department of the transferee servicer, that can be contacted by the borrower to answer inquiries relating to the transfer of servicing.

(E) The date on which the transferor servicer who is servicing the mortgage loan before the assignment, sale, or transfer will cease to accept payments relating to the loan and the date on which the transferee servicer will begin to accept such payments.

(F) Any information concerning the effect the transfer may have, if any, on the terms of or the continued availability of mortgage life or disability insurance or any other type of optional insurance and what action, if any, the borrower must take to maintain coverage.

(G) A statement that the assignment, sale, or transfer of the servicing of the mortgage loan does not affect any term or condition of the security instruments other than terms directly related to the servicing of such loan.

(c) Notice by transferee of loan servicing at time of transfer

(1) Notice requirement

Each transferee servicer to whom the servicing of any federally related mortgage loan is assigned, sold, or transferred shall notify the borrower of any such assignment, sale, or transfer.

(2) Time of notice

(A) In general

Except as provided in subparagraphs (B) and (C), the notice required under paragraph (1) shall be made to the borrower not more than 15 days after the effective date of transfer of the servicing of the mortgage loan (with respect to which such notice is made).

(B) Exception for certain proceedings

The notice required under paragraph (1) shall be made to the borrower not more than 30 days after the effective date of assignment, sale, or transfer of the servicing of the mortgage loan (with respect to which such notice is made) in any case in which the assignment, sale, or transfer of the servicing of the mortgage loan is preceded by-

(i) termination of the contract for servicing the loan for cause;

(ii) commencement of proceedings for bankruptcy of the servicer; or

(iii) commencement of proceedings by the Federal Deposit Insurance Corporation or the Resolution Trust Corporation for conservatorship or receivership of the servicer (or an entity by which the servicer is owned or controlled).

(C) Exception for notice provided at closing

The provisions of subparagraphs (A) and (B) shall not apply to any assignment, sale, or transfer of the servicing of any mortgage loan if the person who makes the loan provides to the borrower, at settlement (with respect to the property for which the mortgage loan is made), written notice under paragraph (3) of such transfer.

(3) Contents of notice

Any notice required under paragraph (1) shall include the information described in subsection (b)(3).

(d) Treatment of loan payments during transfer period

During the 60-day period beginning on the effective date of transfer of the servicing of any federally related mortgage loan, a late fee may not be imposed on the borrower with respect to any payment on such loan and no such payment may be treated as late for any other purposes, if the payment is received by the transferor servicer (rather than the transferee servicer who should properly receive payment) before the due date applicable to such payment.

(e) Duty of loan servicer to respond to borrower inquiries

(1) Notice of receipt of inquiry

(A) In general

If any servicer of a federally related mortgage loan receives a qualified written request from the borrower (or an agent of the borrower) for information relating to the servicing of such loan, the servicer shall provide a written response acknowledging receipt of the correspondence within 5 days (excluding legal public holidays, Saturdays, and Sundays) unless the action requested is taken within such period.

(B) Qualified written request

For purposes of this subsection, a qualified written request shall be a written correspondence, other than notice on a payment coupon or other payment medium supplied by the servicer, that-

(i) includes, or otherwise enables the servicer to identify, the name and account of the borrower; and

(ii) includes a statement of the reasons for the belief of the borrower, to the extent applicable, that the account is in error or provides sufficient detail to the servicer regarding other information sought by the borrower.

(2) Action with respect to inquiry

Not later than 30 days (excluding legal public holidays, Saturdays, and Sundays) after the receipt from any borrower of any qualified written request under paragraph (1) and, if applicable, before taking any action with respect to the inquiry of the borrower, the servicer shall-

(A) make appropriate corrections in the account of the borrower, including the crediting of any late charges or penalties, and transmit to the borrower a written notification of such correction (which shall include the name and telephone number of a representative of the servicer who can provide assistance to the borrower);

(B) after conducting an investigation, provide the borrower with a written explanation or clarification that includes-

(i) to the extent applicable, a statement of the reasons for which the servicer believes the account of the borrower is correct as determined by the servicer; and

(ii) the name and telephone number of an individual employed by, or the office or department of, the servicer who can provide assistance to the borrower; or

(C) after conducting an investigation, provide the borrower with a written explanation or clarification that includes-

(i) information requested by the borrower or an explanation of why the information requested is unavailable or cannot be obtained by the servicer; and

(ii) the name and telephone number of an individual employed by, or the office or department of, the servicer who can provide assistance to the borrower.

(3) Protection of credit rating

During the 60-day period beginning on the date of the servicer's receipt from any borrower of a qualified written request relating to a dispute regarding the borrower's payments, a servicer may not provide information regarding any overdue payment, owed by such borrower and relating to such period or qualified written request, to any consumer reporting agency (as such term is defined under section 1681a of title 15).

(4) Limited extension of response time

The 30-day period described in paragraph (2) may be extended for not more than 15 days if, before the end of such 30-day period, the servicer notifies the borrower of the extension and the reasons for the delay in responding.

(f) Damages and costs

Whoever fails to comply with any provision of this section shall be liable to the borrower for each such failure in the following amounts:

(1) Individuals

In the case of any action by an individual, an amount equal to the sum of-

(A) any actual damages to the borrower as a result of the failure; and

(B) any additional damages, as the court may allow, in the case of a pattern or practice of noncompliance with the requirements of this section, in an amount not to exceed $2,000.

(2) Class actions

In the case of a class action, an amount equal to the sum of-

(A) any actual damages to each of the borrowers in the class as a result of the failure; and

(B) any additional damages, as the court may allow, in the case of a pattern or practice of noncompliance with the requirements of this section, in an amount not greater than $2,000 for each member of the class, except that the total amount of damages under this subparagraph in any class action may not exceed the lesser of-

(i) $1,000,000; or

(ii) 1 percent of the net worth of the servicer.

(3) Costs

In addition to the amounts under paragraph (1) or (2), in the case of any successful action under this section, the costs of the action, together with any attorneys fees incurred in connection with such action as the court may determine to be reasonable under the circumstances.

(4) Nonliability

A transferor or transferee servicer shall not be liable under this subsection for any failure to comply with any requirement under this section if, within 60 days after discovering an error (whether pursuant to a final written examination report or the servicer's own procedures) and before the commencement of an action under this subsection and the receipt of written notice of the error from the borrower, the servicer notifies the person concerned of the error and makes whatever adjustments are necessary in the appropriate account to ensure that the person will not be required to pay an amount in excess of any amount that the person otherwise would have paid.

(g) Administration of escrow accounts

If the terms of any federally related mortgage loan require the borrower to make payments to the servicer of the loan for deposit into an escrow account for the purpose of assuring payment of taxes, insurance premiums, and other charges with respect to the property, the servicer shall make payments from the escrow account for such taxes, insurance premiums, and other charges in a timely manner as such payments become due. Any balance in any such account that is within the servicer's control at the time the loan is paid off shall be promptly returned to the borrower within 20 business days or credited to a similar account for a new mortgage loan to the borrower with the same lender.

(h) Preemption of conflicting State laws

Notwithstanding any provision of any law or regulation of any State, a person who makes a federally related mortgage loan or a servicer shall be considered to have complied with the provisions of any such State law or regulation requiring notice to a borrower at the time of application for a loan or transfer of the servicing of a loan if such person or servicer complies with the requirements under this section regarding timing, content, and procedures for notification of the borrower.

(i) Definitions

For purposes of this section:

(1) Effective date of transfer

The term "effective date of transfer" means the date on which the mortgage payment of a borrower is first due to the transferee servicer of a mortgage loan pursuant to the assignment, sale, or transfer of the servicing of the mortgage loan.

(2) Servicer

The term "servicer" means the person responsible for servicing of a loan (including the person who makes or holds a loan if such person also services the loan). The term does not include-

(A) the Federal Deposit Insurance Corporation or the Resolution Trust Corporation, in connection with assets acquired, assigned, sold, or transferred pursuant to section 1823(c) of this title or as receiver or conservator of an insured depository institution; and

(B) the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Resolution Trust Corporation, or the Federal Deposit Insurance Corporation, in any case in which the assignment, sale, or transfer of the servicing of the mortgage loan is preceded by-

(i) termination of the contract for servicing the loan for cause;

(ii) commencement of proceedings for bankruptcy of the servicer; or

(iii) commencement of proceedings by the Federal Deposit Insurance Corporation or the Resolution Trust Corporation for conservatorship or receivership of the servicer (or an entity by which the servicer is owned or controlled).

(3) Servicing

The term "servicing" means receiving any scheduled periodic payments from a borrower pursuant to the terms of any loan, including amounts for escrow accounts described in section 2609 of this title, and making the payments of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the loan.

(j) Transition

(1) Originator liability

A person who makes a federally related mortgage loan shall not be liable to a borrower because of a failure of such person to comply with subsection (a) with respect to an application for a loan made by the borrower before the regulations referred to in paragraph (3) take effect.

(2) Servicer liability

A servicer of a federally related mortgage loan shall not be liable to a borrower because of a failure of the servicer to perform any duty under subsection (b), (c), (d), or (e) that arises before the regulations referred to in paragraph (3) take effect.

(3) Regulations and effective date

The Bureau shall establish any requirements necessary to carry out this section. Such regulations shall include the model disclosure statement required under subsection (a)(2).

(k) Servicer prohibitions

(1) In general

A servicer of a federally related mortgage shall not-

(A) obtain force-placed hazard insurance unless there is a reasonable basis to believe the borrower has failed to comply with the loan contract's requirements to maintain property insurance;

(B) charge fees for responding to valid qualified written requests (as defined in regulations which the Bureau of Consumer Financial Protection shall prescribe) under this section;

(C) fail to take timely action to respond to a borrower's requests to correct errors relating to allocation of payments, final balances for purposes of paying off the loan, or avoiding foreclosure, or other standard servicer's duties;

(D) fail to respond within 10 business days to a request from a borrower to provide the identity, address, and other relevant contact information about the owner or assignee of the loan; or

(E) fail to comply with any other obligation found by the Bureau of Consumer Financial Protection, by regulation, to be appropriate to carry out the consumer protection purposes of this chapter.

(2) Force-placed insurance defined

For purposes of this subsection and subsections (l) and (m), the term "force-placed insurance" means hazard insurance coverage obtained by a servicer of a federally related mortgage when the borrower has failed to maintain or renew hazard insurance on such property as required of the borrower under the terms of the mortgage.

(l) Requirements for force-placed insurance

A servicer of a federally related mortgage shall not be construed as having a reasonable basis for obtaining force-placed insurance unless the requirements of this subsection have been met.

(1) Written notices to borrower

A servicer may not impose any charge on any borrower for force-placed insurance with respect to any property securing a federally related mortgage unless-

(A) the servicer has sent, by first-class mail, a written notice to the borrower containing-

(i) a reminder of the borrower's obligation to maintain hazard insurance on the property securing the federally related mortgage;

(ii) a statement that the servicer does not have evidence of insurance coverage of such property;

(iii) a clear and conspicuous statement of the procedures by which the borrower may demonstrate that the borrower already has insurance coverage; and

(iv) a statement that the servicer may obtain such coverage at the borrower's expense if the borrower does not provide such demonstration of the borrower's existing coverage in a timely manner;

(B) the servicer has sent, by first-class mail, a second written notice, at least 30 days after the mailing of the notice under subparagraph (A) that contains all the information described in each clause of such subparagraph; and

(C) the servicer has not received from the borrower any demonstration of hazard insurance coverage for the property securing the mortgage by the end of the 15-day period beginning on the date the notice under subparagraph (B) was sent by the servicer.

(2) Sufficiency of demonstration

A servicer of a federally related mortgage shall accept any reasonable form of written confirmation from a borrower of existing insurance coverage, which shall include the existing insurance policy number along with the identity of, and contact information for, the insurance company or agent, or as otherwise required by the Bureau of Consumer Financial Protection.

(3) Termination of force-placed insurance

Within 15 days of the receipt by a servicer of confirmation of a borrower's existing insurance coverage, the servicer shall-

(A) terminate the force-placed insurance; and

(B) refund to the consumer all force-placed insurance premiums paid by the borrower during any period during which the borrower's insurance coverage and the force-placed insurance coverage were each in effect, and any related fees charged to the consumer's account with respect to the force-placed insurance during such period.

(4) Clarification with respect to Flood Disaster Protection Act

No provision of this section shall be construed as prohibiting a servicer from providing simultaneous or concurrent notice of a lack of flood insurance pursuant to section 4012a(e) of title 42.

(m) Limitations on force-placed insurance charges

All charges, apart from charges subject to State regulation as the business of insurance, related to force-placed insurance imposed on the borrower by or through the servicer shall be bona fide and reasonable.

(Pub. L. 93–533, §6, as added Pub. L. 101–625, title IX, §941, Nov. 28, 1990, 104 Stat. 4405 ; amended Pub. L. 102–27, title III, §312(a), Apr. 10, 1991, 105 Stat. 154 ; Pub. L. 103–325, title III, §345, Sept. 23, 1994, 108 Stat. 2239 ; Pub. L. 104–208, div. A, title II, §2103(a), Sept. 30, 1996, 110 Stat. 3009–399 ; Pub. L. 111–203, title X, §1098(4), title XIV, §1463, July 21, 2010, 124 Stat. 2104 , 2182.)

§2606. Exempted transactions

(a) In general

This chapter does not apply to credit transactions involving extensions of credit-

(1) primarily for business, commercial, or agricultural purposes; or

(2) to government or governmental agencies or instrumentalities.

(b) Interpretation

In prescribing regulations under section 2617(a) of this title, the Bureau shall ensure that, with respect to subsection (a) of this section, the exemption for credit transactions involving extensions of credit primarily for business, commercial, or agricultural purposes, as provided in subsection (a)(1) [1] of this section shall be the same as the exemption for such credit transactions under section 1603(1) of title 15.

(Pub. L. 93–533, §7, as added Pub. L. 103–325, title III, §312, Sept. 23, 1994, 108 Stat. 2221 ; amended Pub. L. 104–208, div. A, title II, §2103(b), Sept. 30, 1996, 110 Stat. 3009–399 ; Pub. L. 111–203, title X, §1098(5), July 21, 2010, 124 Stat. 2104 .)

§2607. Prohibition against kickbacks and unearned fees

(a) Business referrals

No person shall give and no person shall accept any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person.

(b) Splitting charges

No person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a real estate settlement service in connection with a transaction involving a federally related mortgage loan other than for services actually performed.

(c) Fees, salaries, compensation, or other payments

Nothing in this section shall be construed as prohibiting (1) the payment of a fee (A) to attorneys at law for services actually rendered or (B) by a title company to its duly appointed agent for services actually performed in the issuance of a policy of title insurance or (C) by a lender to its duly appointed agent for services actually performed in the making of a loan, (2) the payment to any person of a bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed, (3) payments pursuant to cooperative brokerage and referral arrangements or agreements between real estate agents and brokers, (4) affiliated business arrangements so long as (A) a disclosure is made of the existence of such an arrangement to the person being referred and, in connection with such referral, such person is provided a written estimate of the charge or range of charges generally made by the provider to which the person is referred (i) in the case of a face-to-face referral or a referral made in writing or by electronic media, at or before the time of the referral (and compliance with this

requirement in such case may be evidenced by a notation in a written, electronic, or similar system of records maintained in the regular course of business); (ii) in the case of a referral made by telephone, within 3 business days after the referral by telephone,[1] (and in such case an abbreviated verbal disclosure of the existence of the arrangement and the fact that a written disclosure will be provided within 3 business days shall be made to the person being referred during the telephone referral); or (iii) in the case of a referral by a lender (including a referral by a lender to an affiliated lender), at the time the estimates required under section 2604(c) of this title are provided (notwithstanding clause (i) or (ii)); and any required written receipt of such disclosure (without regard to the manner of the disclosure under clause (i), (ii), or (iii)) may be obtained at the closing or settlement (except that a person making a face-to-face referral who provides the written disclosure at or before the time of the referral shall attempt to obtain any required written receipt of such disclosure at such time and if the person being referred chooses not to acknowledge the receipt of the disclosure at that time, that fact shall be noted in the written, electronic, or similar system of records maintained in the regular course of business by the person making the referral), (B) such person is not required to use any particular provider of settlement services, and (C) the only thing of value that is received from the arrangement, other than the payments permitted under this subsection, is a return on the ownership interest or franchise relationship, or (5) such other payments or classes of payments or other transfers as are specified in regulations prescribed by the Bureau, after consultation with the Attorney General, the Secretary of Veterans Affairs, the Federal Home Loan Bank Board, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and the Secretary of Agriculture. For purposes of the preceding sentence, the following shall not be considered a violation of clause (4)(B): (i) any arrangement that requires a buyer, borrower, or seller to pay for the services of an attorney, credit reporting agency, or real estate appraiser chosen by the lender to represent the lender's interest in a real estate transaction, or (ii) any arrangement where an attorney or law firm represents a client in a real estate transaction and issues or arranges for the issuance of a policy of title insurance in the transaction directly as agent or through a separate corporate title insurance agency that may be established by that attorney or law firm and operated as an adjunct to his or its law practice.

(d) Penalties for violations; joint and several liability; treble damages; actions for injunction by Bureau and Secretary and by State officials; costs and attorney fees; construction of State laws

(1) Any person or persons who violate the provisions of this section shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

(2) Any person or persons who violate the prohibitions or limitations of this section shall be jointly and severally liable to the person or persons charged for the settlement service involved in the violation in an amount equal to three times the amount of any charge paid for such settlement service.

(3) No person or persons shall be liable for a violation of the provisions of subsection (c)(4)(A) if such person or persons proves by a preponderance of the evidence that such violation was not intentional and resulted from a bona fide error notwithstanding maintenance of procedures that are reasonably adapted to avoid such error.

(4) The Bureau, the Secretary, or the attorney general or the insurance commissioner of any State may bring an action to enjoin violations of this section. Except, to the extent that a person is subject to the jurisdiction of the Bureau, the Secretary, or the attorney general or the insurance commissioner of any State, the Bureau shall have primary authority to enforce or administer this section, subject to subtitle B of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5511 et seq.].

(5) In any private action brought pursuant to this subsection, the court may award to the prevailing party the court costs of the action together with reasonable attorneys fees.

(6) No provision of State law or regulation that imposes more stringent limitations on affiliated business arrangements shall be construed as being inconsistent with this section.

(Pub. L. 93–533, §8, Dec. 22, 1974, 88 Stat. 1727 ; Pub. L. 94–205, §7, Jan. 2, 1976, 89 Stat. 1158 ; Pub. L. 98–181, title I [title IV, §461(b), (c)], Nov. 30, 1983, 97 Stat. 1231 ; Pub. L. 100–242, title V, §570(g), Feb. 5, 1988, 101 Stat. 1950 ; Pub. L. 102–54, §13(d)(4), June 13, 1991, 105 Stat. 275 ; Pub. L. 104–208, div. A, title II, §2103(c)(2), (d), Sept. 30, 1996, 110 Stat. 3009–400 ; Pub. L. 111–203, title X, §1098(6), (7), July 21, 2010, 124 Stat. 2104 .)

§2608. Title companies; liability of seller

(a) No seller of property that will be purchased with the assistance of a federally related mortgage loan shall require directly or indirectly, as a condition to selling the property, that title insurance covering the property be purchased by the buyer from any particular title company.

(b) Any seller who violates the provisions of subsection (a) shall be liable to the buyer in an amount equal to three times all charges made for such title insurance.

(Pub. L. 93–533, §9, Dec. 22, 1974, 88 Stat. 1728 .)

§2609. Limitation on requirement of advance deposits in escrow accounts

(a) In general

A lender, in connection with a federally related mortgage loan, may not require the borrower or prospective borrower-

(1) to deposit in any escrow account which may be established in connection with such loan for the purpose of assuring payment of taxes, insurance premiums, or other charges with respect to the property, in connection with the settlement, an aggregate sum (for such purpose) in excess of a sum that will be sufficient to pay such taxes, insurance premiums and other charges attributable to the period beginning on the last date on which each such charge would have been paid under the normal lending practice of the lender and local custom, provided that the selection of each such date constitutes prudent lending practice, and ending on the due date of its first full installment payment under the mortgage, plus one-sixth of the estimated total amount of such taxes, insurance premiums and other charges to be paid on dates, as provided above, during the ensuing twelve-month period; or

(2) to deposit in any such escrow account in any month beginning with the first full installment payment under the mortgage a sum (for the purpose of assuring payment of taxes, insurance premiums and other charges with respect to the property) in excess of the sum of (A) one-twelfth of the total amount of the estimated taxes, insurance premiums and other charges which are reasonably anticipated to be paid on dates during the ensuing twelve months which dates are in accordance with the normal lending practice of the lender and local custom, provided that the selection of each such date constitutes prudent lending practice, plus (B) such amount as is necessary to maintain an additional balance in such escrow account not to exceed one-sixth of the estimated total amount of such taxes, insurance premiums and other charges to be paid on dates, as provided above, during the ensuing twelve-month period: *Provided, however*, That in the event the lender determines there will be or is a deficiency he shall not be prohibited from requiring additional monthly deposits in such escrow account to avoid or eliminate such deficiency.

(b) Notification of shortage in escrow account

If the terms of any federally related mortgage loan require the borrower to make payments to the servicer (as the term is defined in section 2605(i) of this title) of the loan for deposit into an escrow account for the purpose of assuring payment of taxes, insurance premiums, and other charges with respect to the property, the servicer shall notify the borrower not less than annually of any shortage of funds in the escrow account.

(c) Escrow account statements

(1) Initial statement

(A) In general

Any servicer that has established an escrow account in connection with a federally related mortgage loan shall submit to the borrower for which the escrow account has been established a statement clearly itemizing the estimated taxes, insurance premiums, and other charges that are reasonably anticipated to be paid from the escrow account during the first 12 months after the establishment of the account and the anticipated dates of such payments.

(B) Time of submission

The statement required under subparagraph (A) shall be submitted to the borrower at closing with respect to the property for which the mortgage loan is made or not later than the expiration of the 45-day period beginning on the date of the establishment of the escrow account.

(C) Initial statement at closing

Any servicer may submit the statement required under subparagraph (A) to the borrower at closing and may incorporate such statement in the uniform settlement statement required under section 2603 of this title. The Bureau shall issue regulations prescribing any changes necessary to the uniform settlement statement under section 2603 of this title that specify how the statement required under subparagraph (A) of this section shall be incorporated in the uniform settlement statement.

(2) Annual statement

(A) In general

Any servicer that has established or continued an escrow account in connection with a federally related mortgage loan shall submit to the borrower for which the escrow account has been established or continued a statement clearly itemizing, for each period described in subparagraph (B) (during which the servicer services the escrow account), the amount of the borrower's current monthly payment, the portion of the monthly payment being placed in the escrow account, the total amount paid into the escrow account during the period, the total amount paid out of the escrow account during the period for taxes, insurance premiums, and other charges (as separately identified), and the balance in the escrow account at the conclusion of the period.

(B) Time of submission

The statement required under subparagraph (A) shall be submitted to the borrower not less than once for each 12-month period, the first such period beginning on the first January 1st that occurs after November 28, 1990, and shall be submitted not more than 30 days after the conclusion of each such 1-year period.

(d) Penalties

(1) In general

In the case of each failure to submit a statement to a borrower as required under subsection (c), the Secretary shall assess to the lender or escrow servicer failing to submit the statement a civil penalty of $50 for each such failure, but the total amount imposed on such lender or escrow servicer for all such failures during any 12-month period referred to in subsection (b) [1] may not exceed $100,000.

(2) Intentional violations

If any failure to which paragraph (1) applies is due to intentional disregard of the requirement to submit the statement, then, with respect to such failure-

(A) the penalty imposed under paragraph (1) shall be $100; and

(B) in the case of any penalty determined under subparagraph (A), the $100,000 limitation under paragraph (1) shall not apply.

(Pub. L. 93–533, §10, Dec. 22, 1974, 88 Stat. 1728 ; Pub. L. 94–205, §8, Jan. 2, 1976, 89 Stat. 1158 ; Pub. L. 101–625, title IX, §942(a), Nov. 28, 1990, 104 Stat. 4411 ; Pub. L. 104–208, div. A, title II, §2103(g)(2), Sept. 30, 1996, 110 Stat. 3009–401 ; Pub. L. 111–203, title X, §1098(8), July 21, 2010, 124 Stat. 2104 .)

§2610. Prohibition of fees for preparation of truth-in-lending, uniform settlement, and escrow account statements

No fee shall be imposed or charge made upon any other person (as a part of settlement costs or otherwise) by a lender in connection with a federally related mortgage loan made by it (or a loan for the purchase of a mobile home), or by a servicer (as the term is defined under section 2605(i) of this title), for or on account of the preparation and submission by such lender or servicer of the statement or statements required (in connection with such loan) by sections 2603 and 2609(c) of this title or by the Truth in Lending Act [15 U.S.C. 1601 et seq.].

(Pub. L. 93–533, §12, Dec. 22, 1974, 88 Stat. 1729 ; Pub. L. 101–625, title IX, §942(b), Nov. 28, 1990, 104 Stat. 4412 .)

§§2611 to 2613. Repealed. Pub. L. 104–208, div. A, title II, §2103(h), Sept. 30, 1996, 110 Stat. 3009–401

Section 2611, Pub. L. 93–533, §13, Dec. 22, 1974, 88 Stat. 1730 , related to establishment of land parcel recordation system on demonstration basis.

Section 2612, Pub. L. 93–533, §14, Dec. 22, 1974, 88 Stat. 1730 , directed Secretary of Housing and Urban Development to report on necessity for further legislation involving real estate settlements.

Section 2613, Pub. L. 93–533, §15, Dec. 22, 1974, 88 Stat. 1730 , directed Secretary of Housing and Urban Development to determine, and report to Congress on, feasibility of including statements of settlement costs in special information booklets.

§2614. Jurisdiction of courts; limitations

Any action pursuant to the provisions of section 2605, 2607, or 2608 of this title may be brought in the United States district court or in any other court of competent jurisdiction, for the district in which the property involved is located, or where the violation is alleged to have occurred, within 3 years in the case of a violation of section 2605 of this title and 1 year in the case of a violation of section 2607 or 2608 of this title from the date of the occurrence of the violation, except that actions brought by the Bureau, the Secretary, the Attorney General of any State, or the insurance commissioner of any State may be brought within 3 years from the date of the occurrence of the violation.

(Pub. L. 93–533, §16, Dec. 22, 1974, 88 Stat. 1731 ; Pub. L. 98–181, title I [title IV, §461(d)], Nov. 30, 1983, 97 Stat. 1232 ; Pub. L. 104–208, div. A, title II, §2103(e), Sept. 30, 1996, 110 Stat. 3009–400 ; Pub. L. 111–203, title X, §1098(9), July 21, 2010, 124 Stat. 2104 .)

§2615. Contracts and liens; validity

Nothing in this chapter shall affect the validity or enforceability of any sale or contract for the sale of real property or any loan, loan agreement, mortgage, or lien made or arising in connection with a federally related mortgage loan.

(Pub. L. 93–533, §17, Dec. 22, 1974, 88 Stat. 1731 .)

§2616. State laws unaffected; inconsistent Federal and State provisions

This chapter does not annul, alter, or affect, or exempt any person subject to the provisions of this chapter from complying with, the laws of any State with respect to settlement practices, except to the extent that those laws are inconsistent with any provision of this chapter, and then only to the extent of the inconsistency. The Bureau is authorized to determine whether such inconsistencies exist. The Bureau may not determine that any State law is inconsistent with any provision of this chapter if the Bureau determines that such law gives greater protection to the consumer. In making these determinations the Bureau shall consult with the appropriate Federal agencies.

(Pub. L. 93–533, §18, Dec. 22, 1974, 88 Stat. 1731 ; Pub. L. 94–205, §9, Jan. 2, 1976, 89 Stat. 1159 ; Pub. L. 111–203, title X, §1098(10), July 21, 2010, 124 Stat. 2104 .)

§2617. Authority of Bureau

(a) Issuance of regulations; exemptions

The Bureau is authorized to prescribe such rules and regulations, to make such interpretations, and to grant such reasonable exemptions for classes of transactions, as may be necessary to achieve the purposes of this chapter.

(b) Liability for acts done in good faith in conformity with rule, regulation, or interpretation

No provision of this chapter or the laws of any State imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Bureau or the Attorney General, notwithstanding that after such act or omission has occurred, such rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(c) Investigations; hearings; failure to obey order; contempt

(1) The Secretary [1] may investigate any facts, conditions, practices, or matters that may be deemed necessary or proper to aid in the enforcement of the provisions of this chapter, in prescribing of rules and regulations thereunder, or in securing information to serve as a basis for recommending further legislation concerning real estate settlement practices. To aid in the investigations, the Bureau is authorized to hold such hearings, administer such oaths, and require by subpena the attendance and testimony of such witnesses and production of such documents as the Bureau deems advisable.

(2) Any district court of the United States within the jurisdiction of which an inquiry is carried on may, in the case of contumacy or refusal to obey a subpena of the Bureau issued under this section, issue an order requiring compliance therewith; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(d) Delay of effectiveness of recent final regulation relating to payments to employees

(1) In general

The amendment to part 3500 of title 24 of the Code of Federal Regulations contained in the final regulation prescribed by the Secretary and published in the Federal Register on June 7, 1996, which will, as of the effective date of such amendment-

(A) eliminate the exemption for payments by an employer to employees of such employer for referral activities which is currently codified as section 3500.14(g)(1)(vii) of such title 24; and
(B) replace such exemption with a more limited exemption in new clauses (vii), (viii), and (ix) of section 3500.14 of such title 24, shall not take effect before July 31, 1997.

(2) Continuation of prior rule

The regulation codified as section 3500.14(g)(1)(vii) of title 24 of the Code of Federal Regulations, relating to employer-employee payments, as in effect on May 1, 1996, shall remain in effect until the date the amendment referred to in paragraph (1) takes effect in accordance with such paragraph.

(3) Public notice of effective date

The Secretary shall provide public notice of the date on which the amendment referred to in paragraph (1) will take effect in accordance with such paragraph not less than 90 days and not more than 180 days before such effective date.

(Pub. L. 93–533, §19, as added Pub. L. 94–205, §10, Jan. 2, 1976, 89 Stat. 1159 ; amended Pub. L. 98–181, title I [title IV, §461(e)], Nov. 30, 1983, 97 Stat. 1232 ; Pub. L. 104–208, div. A, title II, §2103(f), Sept. 30, 1996, 110 Stat. 3009–401 ; Pub. L. 111–203, title X, §1098(11), July 21, 2010, 124 Stat. 2104 .)

Browse Previous | Browse Next

Title 12: Banks and Banking

PART 1024—REAL ESTATE SETTLEMENT PROCEDURES ACT (REGULATION X)

Contents

Subpart A—General Provisions

§1024.1 Designation.
§1024.2 Definitions.
§1024.3 E-Sign applicability.
§1024.4 Reliance upon rule, regulation, or interpretation by the Bureau.
§1024.5 Coverage of RESPA.

Subpart B—Mortgage Settlement and Escrow Accounts

§1024.6 Special information booklet at time of loan application.
§1024.7 Good faith estimate.
§1024.8 Use of HUD-1 or HUD-1A settlement statements.
§1024.9 Reproduction of settlement statements.
§1024.10 One-day advance inspection of HUD-1 or HUD-1A settlement statement; delivery; recordkeeping.
§1024.11 Mailing.
§1024.12 No fee.
§1024.13 [Reserved]
§1024.14 Prohibition against kickbacks and unearned fees.
§1024.15 Affiliated business arrangements.
§1024.16 Title companies.
§1024.17 Escrow accounts.
§§1024.18--1024.19 [Reserved]
§1024.20 List of homeownership counseling organizations.

Subpart C—Mortgage Servicing

§1024.30 Scope.
§1024.31 Definitions.
§1024.32 General disclosure requirements.
§1024.33 Mortgage servicing transfers.
§1024.34 Timely escrow payments and treatment of escrow account balances.
§1024.35 Error resolution procedures.
§1024.36 Requests for information.
§1024.37 Force-placed insurance.
§1024.38 General servicing policies, procedures, and requirements.
§1024.39 Early intervention requirements for certain borrowers.
§1024.40 Continuity of contact.
§1024.41 Loss mitigation procedures.
Appendix A to Part 1024—Instructions for Completing HUD-1 and HUD-1a Settlement Statements; Sample HUD-1 and HUD-1a Statements
Appendix B to Part 1024—Illustrations of Requirements of RESPA
Appendix C to Part 1024—Instructions for Completing Good Faith Estimate (GFE) Form
Appendix D to Part 1024—Affiliated Business Arrangement Disclosure Statement Format Notice
Appendix E to Part 1024—Arithmetic Steps
Appendix MS to Part 1024—Mortgage Servicing
Appendix MS-1 to Part 1024
Appendix MS-2 to Part 1024
Appendix MS-3 to Part 1024

AUTHORITY: 12 U.S.C. 2603-2605, 2607, 2609, 2617, 5512, 5532, 5581.

SOURCE: 76 FR 78981, Dec. 20, 2011, unless otherwise noted.

Back to Top

Subpart A—General Provisions

Back to Top

§1024.1 Designation.

This part, known as Regulation X, is issued by the Bureau of Consumer Financial Protection to implement the Real Estate Settlement Procedures Act of 1974, as amended, 12 U.S.C. 2601 *et. seq.*

Back to Top

§1024.2 Definitions.

(a) *Statutory terms.* All terms defined in RESPA (12 U.S.C. 2602) are used in accordance with their statutory meaning unless otherwise defined in paragraph (b) of this section or elsewhere in this part.

(b) *Other terms.* As used in this part:

Application means the submission of a borrower's financial information in anticipation of a credit decision relating to a federally related mortgage loan, which shall include the borrower's name, the borrower's monthly income, the borrower's social security number to obtain a credit report, the property address, an estimate of the value of the property, the mortgage loan amount sought, and any other information deemed necessary by the loan originator. An application may either be in writing or electronically submitted, including a written record of an oral application.

Balloon payment has the same meaning as "balloon payment" under Regulation Z (12 CFR part 1026).

Bureau means the Bureau of Consumer Financial Protection.

Business day means a day on which the offices of the business entity are open to the public for carrying on substantially all of the entity's business functions.

Changed circumstances means:

(1)(i) Acts of God, war, disaster, or other emergency;

(ii) Information particular to the borrower or transaction that was relied on in providing the GFE and that changes or is found to be inaccurate after the GFE has been provided. This may include information about the credit quality of the borrower, the amount of the loan, the estimated value of the property, or any other information that was used in providing the GFE;

(iii) New information particular to the borrower or transaction that was not relied on in providing the GFE; or

(iv) Other circumstances that are particular to the borrower or transaction, including boundary disputes, the need for flood insurance, or environmental problems.

(2) Changed circumstances do not include:

(i) The borrower's name, the borrower's monthly income, the property address, an estimate of the value of the property, the mortgage loan amount sought, and any information contained in any credit report obtained by the loan originator prior to providing the GFE, unless the information changes or is found to be inaccurate after the GFE has been provided; or

(ii) Market price fluctuations by themselves.

Dealer means, in the case of property improvement loans, a seller, contractor, or supplier of goods or services. In the case of manufactured home loans, "dealer" means one who engages in the business of manufactured home retail sales.

Dealer loan or dealer consumer credit contract means, generally, any arrangement in which a dealer assists the borrower in obtaining a federally related mortgage loan from the funding lender and then assigns the dealer's legal interests to the funding lender and receives the net proceeds of the loan. The funding lender is the lender for the purposes of the disclosure requirements of this part. If a dealer is a "creditor" as defined under the definition of "federally related mortgage loan" in this part, the dealer is the lender for purposes of this part.

Effective date of transfer is defined in section 6(i)(1) of RESPA (12 U.S.C. 2605(i)(1)). In the case of a home equity conversion mortgage or reverse mortgage as referenced in this section, the effective date of transfer is the transfer date agreed upon by the transferee servicer and the transferor servicer.

Federally related mortgage loan means:

(1) Any loan (other than temporary financing, such as a construction loan):

(i) That is secured by a first or subordinate lien on residential real property, including a refinancing of any secured loan on residential real property, upon which there is either:

(A) Located or, following settlement, will be constructed using proceeds of the loan, a structure or structures designed principally for occupancy of from one to four families (including individual units of condominiums and cooperatives and including any related interests, such as a share in the cooperative or right to occupancy of the unit); or

(B) Located or, following settlement, will be placed using proceeds of the loan, a manufactured home; and

(ii) For which one of the following paragraphs applies. The loan:

(A) Is made in whole or in part by any lender that is either regulated by or whose deposits or accounts are insured by any agency of the Federal Government;

(B) Is made in whole or in part, or is insured, guaranteed, supplemented, or assisted in any way:

(*1*) By the Secretary of the Department of Housing and Urban Development (HUD) or any other officer or agency of the Federal Government; or

(2) Under or in connection with a housing or urban development program administered by the Secretary of HUD or a housing or related program administered by any other officer or agency of the Federal Government;

(C) Is intended to be sold by the originating lender to the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation (or its successors), or a financial institution from which the loan is to be purchased by the Federal Home Loan Mortgage Corporation (or its successors);

(D) Is made in whole or in part by a "creditor," as defined in section 103(g) of the Consumer Credit Protection Act (15 U.S.C. 1602(g)), that makes or invests in residential real estate loans aggregating more than $1,000,000 per year. For purposes of this definition, the term "creditor" does not include any agency or instrumentality of any State, and the term "residential real estate loan" means any loan secured by residential real property, including single-family and multifamily residential property;

(E) Is originated either by a dealer or, if the obligation is to be assigned to any maker of mortgage loans specified in paragraphs (1)(ii)(A) through (D) of this definition, by a mortgage broker; or

(F) Is the subject of a home equity conversion mortgage, also frequently called a "reverse mortgage," issued by any maker of mortgage loans specified in paragraphs (1)(ii)(A) through (D) of this definition.

(2) Any installment sales contract, land contract, or contract for deed on otherwise qualifying residential property is a federally related mortgage loan if the contract is funded in whole or in part by proceeds of a loan made by any maker of mortgage loans specified in paragraphs (1)(ii) (A) through (D) of this definition.

(3) If the residential real property securing a mortgage loan is not located in a State, the loan is not a federally related mortgage loan.

Good faith estimate or *GFE* means an estimate of settlement charges a borrower is likely to incur, as a dollar amount, and related loan information, based upon common practice and experience in the locality of the mortgaged property, as provided on the form prescribed in §1024.7 and prepared in accordance with the Instructions in appendix C to this part.

HUD means the Department of Housing and Urban Development.

HUD-1 or HUD-1A settlement statement (also *HUD-1 or HUD-1A*) means the statement that is prescribed in this part for setting forth settlement charges in connection with either the purchase or the refinancing (or other subordinate lien transaction) of 1- to 4-family residential property.

Lender means, generally, the secured creditor or creditors named in the debt obligation and document creating the lien. For loans originated by a mortgage broker that closes a federally related mortgage loan in its own name in a table funding transaction, the lender is the person to whom the obligation is initially assigned at or after settlement. A lender, in connection with dealer loans, is the lender to whom the loan is assigned, unless the dealer meets the definition of creditor as defined under "federally related mortgage loan" in this section. See also §1024.5(b)(7), secondary market transactions.

Loan originator means a lender or mortgage broker.

Manufactured home is defined in HUD regulation 24 CFR 3280.2.

Mortgage broker means a person (other than an employee of a lender) that renders origination services and serves as an intermediary between a borrower and a lender in a transaction involving a federally related mortgage loan, including such a person that closes the loan in its own name in a table-funded transaction.

Mortgaged property means the real property that is security for the federally related mortgage loan.

Origination service means any service involved in the creation of a federally related mortgage loan, including but not limited to the taking of the loan application, loan processing, the underwriting and funding of the loan, and the processing and administrative services required to perform these functions.

Person is defined in section 3(5) of RESPA (12 U.S.C. 2602(5)).

Prepayment penalty has the same meaning as "prepayment penalty" under Regulation Z (12 CFR part 1026).

Public Guidance Documents means FEDERAL REGISTER documents adopted or published, that the Bureau may amend from time-to-time by publication in the FEDERAL REGISTER. These documents are also available from the Bureau. Requests for copies of Public Guidance Documents should be directed to the Associate Director, Research, Markets, and Regulations, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552.

Refinancing means a transaction in which an existing obligation that was subject to a secured lien on residential real property is satisfied and replaced by a new obligation undertaken by the same borrower and with the same or a new lender. The following shall not be treated as a refinancing, even when the existing obligation is satisfied and replaced by a new obligation with the same lender (this definition of "refinancing" as to transactions with the same lender is similar to Regulation Z, 12 CFR 1026.20(a)):

(1) A renewal of a single payment obligation with no change in the original terms;

(2) A reduction in the annual percentage rate as computed under the Truth in Lending Act with a corresponding change in the payment schedule;

(3) An agreement involving a court proceeding;

(4) A workout agreement, in which a change in the payment schedule or change in collateral requirements is agreed to as a result of the consumer's default or delinquency, unless the rate is increased or the new amount financed exceeds the unpaid balance plus earned finance charges and premiums for continuation of allowable insurance; and

(5) The renewal of optional insurance purchased by the consumer that is added to an existing transaction, if disclosures relating to the initial purchase were provided.

Regulation Z means the regulations issued by the Bureau (12 CFR part 1026) to implement the Federal Truth in Lending Act (15 U.S.C. 1601 *et seq.*), and includes the Commentary on Regulation Z.

Required use means a situation in which a person must use a particular provider of a settlement service in order to have access to some distinct service or property, and the person will pay for the settlement service of the particular provider or will pay a charge attributable, in whole or in part, to the settlement service. However, the offering of a package (or combination of settlement services) or the

offering of discounts or rebates to consumers for the purchase of multiple settlement services does not constitute a required use. Any package or discount must be optional to the purchaser. The discount must be a true discount below the prices that are otherwise generally available, and must not be made up by higher costs elsewhere in the settlement process.

RESPA means the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 *et seq.*).

Servicer means a person responsible for the servicing of a federally related mortgage loan (including the person who makes or holds such loan if such person also services the loan). The term does not include:

(1) The Federal Deposit Insurance Corporation (FDIC), in connection with assets acquired, assigned, sold, or transferred pursuant to section 13(c) of the Federal Deposit Insurance Act or as receiver or conservator of an insured depository institution;

(2) The National Credit Union Administration (NCUA), in connection with assets acquired, assigned, sold, or transferred pursuant to section 208 of the Federal Credit Union Act or as conservator or liquidating agent of an insured credit union; and

(3) The Federal National Mortgage Corporation (FNMA); the Federal Home Loan Mortgage Corporation (Freddie Mac); the FDIC; HUD, including the Government National Mortgage Association (GNMA) and the Federal Housing Administration (FHA) (including cases in which a mortgage insured under the National Housing Act (12 U.S.C. 1701 *et seq.*) is assigned to HUD); the NCUA; the Farm Service Agency; and the Department of Veterans Affairs (VA), in any case in which the assignment, sale, or transfer of the servicing of the federally related mortgage loan is preceded by termination of the contract for servicing the loan for cause, commencement of proceedings for bankruptcy of the servicer, commencement of proceedings by the FDIC for conservatorship or receivership of the servicer (or an entity by which the servicer is owned or controlled), or commencement of proceedings by the NCUA for appointment of a conservator or liquidating agent of the servicer (or an entity by which the servicer is owned or controlled).

Servicing means receiving any scheduled periodic payments from a borrower pursuant to the terms of any federally related mortgage loan, including amounts for escrow accounts under section 10 of RESPA (12 U.S.C. 2609), and making the payments to the owner of the loan or other third parties of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the mortgage servicing loan documents or servicing contract. In the case of a home equity conversion mortgage or reverse mortgage as referenced in this section, servicing includes making payments to the borrower.

Settlement means the process of executing legally binding documents regarding a lien on property that is subject to a federally related mortgage loan. This process may also be called "closing" or "escrow" in different jurisdictions.

Settlement service means any service provided in connection with a prospective or actual settlement, including, but not limited to, any one or more of the following:

(1) Origination of a federally related mortgage loan (including, but not limited to, the taking of loan applications, loan processing, and the underwriting and funding of such loans);

(2) Rendering of services by a mortgage broker (including counseling, taking of applications, obtaining verifications and appraisals, and other loan processing and origination services, and communicating with the borrower and lender);

(3) Provision of any services related to the origination, processing or funding of a federally related mortgage loan;

(4) Provision of title services, including title searches, title examinations, abstract preparation, insurability determinations, and the issuance of title commitments and title insurance policies;

(5) Rendering of services by an attorney;

(6) Preparation of documents, including notarization, delivery, and recordation;

(7) Rendering of credit reports and appraisals;

(8) Rendering of inspections, including inspections required by applicable law or any inspections required by the sales contract or mortgage documents prior to transfer of title;

(9) Conducting of settlement by a settlement agent and any related services;

(10) Provision of services involving mortgage insurance;

(11) Provision of services involving hazard, flood, or other casualty insurance or homeowner's warranties;

(12) Provision of services involving mortgage life, disability, or similar insurance designed to pay a mortgage loan upon disability or death of a borrower, but only if such insurance is required by the lender as a condition of the loan;

(13) Provision of services involving real property taxes or any other assessments or charges on the real property;

(14) Rendering of services by a real estate agent or real estate broker; and

(15) Provision of any other services for which a settlement service provider requires a borrower or seller to pay.

Special information booklet means the booklet adopted pursuant to section 5 of RESPA (12 U.S.C. 2604) to help persons understand the nature and costs of settlement services. The Bureau publishes the form of the special information booklet in the FEDERAL REGISTER or by other public notice. The Bureau may issue or approve additional booklets or alternative booklets by publication of a Notice in the FEDERAL REGISTER.

State means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

Table funding means a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds. A table-funded transaction is not a secondary market transaction (see §1024.5(b)(7)).

Third party means a settlement service provider other than a loan originator.

Title company means any institution, or its duly authorized agent, that is qualified to issue title insurance.

Title service means any service involved in the provision of title insurance (lender's or owner's policy), including but not limited to: Title examination and evaluation; preparation and issuance of title commitment; clearance of underwriting objections; preparation and issuance of a title insurance policy or policies; and the processing and administrative services required to perform these functions. The term also includes the service of conducting a settlement.

Tolerance means the maximum amount by which the charge for a category or categories of settlement costs may exceed the amount of the estimate for such category or categories on a GFE.

[76 FR 78981, Dec. 20, 2011, as amended at 78 FR 10873, Feb. 14, 2013]

Back to Top

§1024.3 E-Sign applicability.

The disclosures required by this part may be provided in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*).

[78 FR 10873, Feb. 14, 2013]

Back to Top

§1024.4 Reliance upon rule, regulation, or interpretation by the Bureau.

(a) *Rule, regulation or interpretation.* (1) For purposes of sections 19(a) and (b) of RESPA (12 U.S.C. 2617(a) and (b)), only the following constitute a rule, regulation or interpretation of the Bureau:

(i) All provisions, including appendices and supplements, of this part. Any other document referred to in this part is not incorporated in this part unless it is specifically set out in this part;

(ii) Any other document that is published in the FEDERAL REGISTER by the Bureau and states that it is an "interpretation," "interpretive rule," "commentary," or a "statement of policy" for purposes of section 19(a) of RESPA. Except in unusual circumstances, interpretations will not be issued separately but will be incorporated in an official interpretation to this part, which will be amended periodically.

(2) A "rule, regulation, or interpretation thereof by the Bureau" for purposes of section 19(b) of RESPA (12 U.S.C. 2617(b)) shall not include the special information booklet prescribed by the Bureau or any other statement or issuance, whether oral or written, by an officer or representative of the Bureau, letter or memorandum by the Director, General Counsel, or other officer or employee of the Bureau, preamble to a regulation or other issuance of the Bureau, Public Guidance Document, report to Congress, pleading, affidavit or other document in litigation, pamphlet, handbook, guide, telegraphic communication, explanation, instructions to forms, speech or other material of any nature which is not specifically included in paragraph (a)(1) of this section.

(b) All informal counsel's opinions and staff interpretations issued by HUD before November 2, 1992, were withdrawn as of that date. Courts and administrative agencies, however, may use previous opinions to determine the validity of conduct under the previous Regulation X.

[76 FR 78981, Dec. 20, 2011, as amended at 78 FR 10874, Feb. 14, 2013]

Back to Top

§1024.5 Coverage of RESPA.

(a) *Applicability.* RESPA and this part apply to federally related mortgage loans, except as provided in paragraphs (b) and (d) of this section.

(b) *Exemptions.* (1) [Reserved]

(2) *Business purpose loans.* An extension of credit primarily for a business, commercial, or agricultural purpose, as defined by 12 CFR 1026.3(a)(1) of Regulation Z. Persons may rely on Regulation Z in determining whether the exemption applies.

(3) *Temporary financing.* Temporary financing, such as a construction loan. The exemption for temporary financing does not apply to a loan made to finance construction of 1- to 4-family residential property if the loan is used as, or may be converted to, permanent financing by the same lender or is used to finance transfer of title to the first user. If a lender issues a commitment for permanent financing, with or without conditions, the loan is covered by this part. Any construction loan for new or rehabilitated 1- to 4-family residential property, other than a loan to a *bona fide* builder (a person who regularly constructs 1- to 4-family residential structures for sale or lease), is subject to this part if its term is for two years or more. A "bridge loan" or "swing loan" in which a lender takes a security interest in otherwise covered 1- to 4-family residential property is not covered by RESPA and this part.

(4) *Vacant land.* Any loan secured by vacant or unimproved property, unless within two years from the date of the settlement of the loan, a structure or a manufactured home will be constructed or placed on the real property using the loan proceeds. If a loan for a structure or manufactured home to be placed on vacant or unimproved property will be secured by a lien on that property, the transaction is covered by this part.

(5) *Assumption without lender approval.* Any assumption in which the lender does not have the right expressly to approve a subsequent person as the borrower on an existing federally related mortgage loan. Any assumption in which the lender's permission is both required and obtained is covered by RESPA and this part, whether or not the lender charges a fee for the assumption.

(6) *Loan conversions.* Any conversion of a federally related mortgage loan to different terms that are consistent with provisions of the original mortgage instrument, as long as a new note is not required, even if the lender charges an additional fee for the conversion.

(7) *Secondary market transactions.* A bona fide transfer of a loan obligation in the secondary market is not covered by RESPA and this part, except with respect to RESPA (12 U.S.C. 2605) and subpart C of this part (§§1024.30-1024.41). In determining what constitutes a *bona fide* transfer, the Bureau will consider the real source of funding and the real interest of the funding lender. Mortgage broker transactions that are table-funded are not secondary market transactions. Neither the creation of a dealer loan or dealer consumer credit contract, nor the first assignment of such loan or contract to a lender, is a secondary market transaction (see §1024.2).

(c) *Relation to State laws.* (1) State laws that are inconsistent with RESPA or this part are preempted to the extent of the inconsistency. However, RESPA and these regulations do not annul, alter, affect, or exempt any person subject to their provisions from complying with the laws of any State with respect to settlement practices, except to the extent of the inconsistency.

(2) Upon request by any person, the Bureau is authorized to determine if inconsistencies with State law exist; in doing so, the Bureau shall consult with appropriate Federal agencies.

(i) The Bureau may not determine that a State law or regulation is inconsistent with any provision of RESPA or this part, if the Bureau determines that such law or regulation gives greater protection to the consumer.

(ii) In determining whether provisions of State law or regulations concerning affiliated business arrangements are inconsistent with RESPA or this part, the Bureau may not construe those provisions that impose more stringent limitations on affiliated business arrangements as inconsistent with RESPA so long as they give more protection to consumers and/or competition.

(3) Any person may request the Bureau to determine whether an inconsistency exists by submitting to the address established by the Bureau to request an official interpretation, a copy of the State law in question, any other law or judicial or administrative opinion that implements, interprets or applies the relevant provision, and an explanation of the possible inconsistency. A determination by the Bureau that an inconsistency with State law exists will be made by publication of a notice in the FEDERAL REGISTER. "Law" as used in this section includes regulations and any enactment which has the force and effect of law and is issued by a State or any political subdivision of a State.

(4) A specific preemption of conflicting State laws regarding notices and disclosures of mortgage servicing transfers is set forth in §1024.33(d).

(d) *Partial exemptions for certain mortgage loans.* Sections 1024.6, 1024.7, 1024.8, 1024.10, and 1024.33(a) do not apply to a federally related mortgage loan:

(1) That is subject to the special disclosure requirements for certain consumer credit transactions secured by real property set forth in Regulation Z, 12 CFR 1026.19(e), (f), and (g); or

(2) That satisfies the criteria in Regulation Z, 12 CFR 1026.3(h).

[76 FR 78981, Dec. 20, 2011, as amended at 78 FR 10874, Feb. 14, 2013; 78 FR 44717, July 24, 2013; 78 FR 80104, Dec. 31, 2013; 80 FR 8775, Feb. 19, 2015]

Subpart B—Mortgage Settlement and Escrow Accounts

Back to Top

Sections 1024.6 through 1024.13 omitted from these materials.

§1024.14 Prohibition against kickbacks and unearned fees.

(a) *Section 8 violation.* Any violation of this section is a violation of section 8 of RESPA (12 U.S.C. 2607).

(b) *No referral fees.* No person shall give and no person shall accept any fee, kickback or other thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or part of a settlement service involving a federally related mortgage loan shall be referred to any person. Any referral of a settlement service is not a compensable service, except as set forth in §1024.14(g)(1). A company may not pay any other company or the employees of any other company for the referral of settlement service business.

(c) *No split of charges except for actual services performed.* No person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a settlement service in connection with a transaction involving a federally related mortgage loan other than for services actually performed. A charge by a person for which no or nominal services are performed or

for which duplicative fees are charged is an unearned fee and violates this section. The source of the payment does not determine whether or not a service is compensable. Nor may the prohibitions of this part be avoided by creating an arrangement wherein the purchaser of services splits the fee.

(d) *Thing of value.* This term is broadly defined in section 3(2) of RESPA (12 U.S.C. 2602(2)). It includes, without limitation, monies, things, discounts, salaries, commissions, fees, duplicate payments of a charge, stock, dividends, distributions of partnership profits, franchise royalties, credits representing monies that may be paid at a future date, the opportunity to participate in a money-making program, retained or increased earnings, increased equity in a parent or subsidiary entity, special bank deposits or accounts, special or unusual banking terms, services of all types at special or free rates, sales or rentals at special prices or rates, lease or rental payments based in whole or in part on the amount of business referred, trips and payment of another person's expenses, or reduction in credit against an existing obligation. The term "payment" is used throughout §§1024.14 and 1024.15 as synonymous with the giving or receiving of any "thing of value" and does not require transfer of money.

(e) *Agreement or understanding.* An agreement or understanding for the referral of business incident to or part of a settlement service need not be written or verbalized but may be established by a practice, pattern or course of conduct. When a thing of value is received repeatedly and is connected in any way with the volume or value of the business referred, the receipt of the thing of value is evidence that it is made pursuant to an agreement or understanding for the referral of business.

(f) *Referral.* (1) A referral includes any oral or written action directed to a person which has the effect of affirmatively influencing the selection by any person of a provider of a settlement service or business incident to or part of a settlement service when such person will pay for such settlement service or business incident thereto or pay a charge attributable in whole or in part to such settlement service or business.

(2) A referral also occurs whenever a person paying for a settlement service or business incident thereto is required to use (see §1024.2, "required use") a particular provider of a settlement service or business incident thereto.

(g) *Fees, salaries, compensation, or other payments.* (1) Section 8 of RESPA permits:

(i) A payment to an attorney at law for services actually rendered;

(ii) A payment by a title company to its duly appointed agent for services actually performed in the issuance of a policy of title insurance;

(iii) A payment by a lender to its duly appointed agent or contractor for services actually performed in the origination, processing, or funding of a loan;

(iv) A payment to any person of a *bona fide* salary or compensation or other payment for goods or facilities actually furnished or for services actually performed;

(v) A payment pursuant to cooperative brokerage and referral arrangements or agreements between real estate agents and real estate brokers. (The statutory exemption restated in this paragraph refers only to fee divisions within real estate brokerage arrangements when all parties are acting in a real estate brokerage capacity, and has no applicability to any fee arrangements between real estate brokers and mortgage brokers or between mortgage brokers.);

(vi) Normal promotional and educational activities that are not conditioned on the referral of business and that do not involve the defraying of expenses that otherwise would be incurred by persons in a position to refer settlement services or business incident thereto; or

(vii) An employer's payment to its own employees for any referral activities.

(2) The Bureau may investigate high prices to see if they are the result of a referral fee or a split of a fee. If the payment of a thing of value bears no reasonable relationship to the market value of the goods or services provided, then the excess is not for services or goods actually performed or provided. These facts may be used as evidence of a violation of section 8 and may serve as a basis for a RESPA investigation. High prices standing alone are not proof of a RESPA violation. The value of a referral (*i.e.,* the value of any additional business obtained thereby) is not to be taken into account in determining whether the payment exceeds the reasonable value of such goods, facilities or services. The fact that the transfer of the thing of value does not result in an increase in any charge made by the person giving the thing of value is irrelevant in determining whether the act is prohibited.

(3) *Multiple services.* When a person in a position to refer settlement service business, such as an attorney, mortgage lender, real estate broker or agent, or developer or builder, receives a payment for providing additional settlement services as part of a real estate transaction, such payment must be for services that are actual, necessary and distinct from the primary services provided by such person. For example, for an attorney of the buyer or seller to receive compensation as a title agent, the attorney must perform core title agent services (for which liability arises) separate from attorney services, including the evaluation of the title search to determine the insurability of the title, the clearance of underwriting objections, the actual issuance of the policy or policies on behalf of the title insurance company, and, where customary, issuance of the title commitment, and the conducting of the title search and closing.

(h) *Recordkeeping.* Any documents provided pursuant to this section shall be retained for five (5) years from the date of execution.

(i) *Appendix B of this part.* Illustrations in appendix B of this part demonstrate some of the requirements of this section.

Back to Top

§1024.15 Affiliated business arrangements.

(a) *General.* An affiliated business arrangement is defined in section 3(7) of RESPA (12 U.S.C. 2602(7)).

(b) *Violation and exemption.* An affiliated business arrangement is not a violation of section 8 of RESPA (12 U.S.C. 2607) and of §1024.14 if the conditions set forth in this section are satisfied. Paragraph (b)(1) of this section shall not apply to the extent it is inconsistent with section 8(c)(4)(A) of RESPA (12 U.S.C. 2607(c)(4)(A)).

(1) The person making each referral has provided to each person whose business is referred a written disclosure, in the format of the Affiliated Business Arrangement Disclosure Statement set forth in appendix D of this part, of the nature of the relationship (explaining the ownership and financial interest) between the provider of settlement services (or business incident thereto) and the person making the referral and of an estimated charge or range of charges generally made by such provider (which describes the charge using the same terminology, as far as practical, as section L of the HUD-1 settlement statement). The disclosures must be provided on a separate piece of paper no later than the time of each referral or, if the lender requires use of a particular provider, the time of loan application, except that:

(i) Where a lender makes the referral to a borrower, the condition contained in paragraph (b)(1) of this section may be satisfied at the time that the good faith estimate or a statement under §1024.7(d) is provided; and

(ii) Whenever an attorney or law firm requires a client to use a particular title insurance agent, the attorney or law firm shall provide the disclosures no later than the time the attorney or law firm is engaged by the client.

(iii) Failure to comply with the disclosure requirements of this section may be overcome if the person making a referral can prove by a preponderance of the evidence that procedures reasonably adopted to result in compliance with these conditions have been maintained and that any failure to comply with these conditions was unintentional and the result of a *bona fide* error. An error of legal judgment with respect to a person's obligations under RESPA is not a *bona fide* error. Administrative and judicial interpretations of section 130(c) of the Truth in Lending Act shall not be binding interpretations of the preceding sentence or section 8(d)(3) of RESPA (12 U.S.C. 2607(d)(3)).

(2) No person making a referral has required (as defined in §1024.2, "required use") any person to use any particular provider of settlement services or business incident thereto, except if such person is a lender, for requiring a buyer, borrower or seller to pay for the services of an attorney, credit reporting agency, or real estate appraiser chosen by the lender to represent the lender's interest in a real estate transaction, or except if such person is an attorney or law firm for arranging for issuance of a title insurance policy for a client, directly as agent or through a separate corporate title insurance agency that may be operated as an adjunct to the law practice of the attorney or law firm, as part of representation of that client in a real estate transaction.

(3) The only thing of value that is received from the arrangement other than payments listed in §1024.14(g) is a return on an ownership interest or franchise relationship.

(i) In an affiliated business arrangement:

(A) *Bona fide* dividends, and capital or equity distributions, related to ownership interest or franchise relationship, between entities in an affiliate relationship, are permissible; and

(B) *Bona fide* business loans, advances, and capital or equity contributions between entities in an affiliate relationship (in any direction), are not prohibited—so long as they are for ordinary business purposes and are not fees for the referral of settlement service business or unearned fees.

(ii) A return on an ownership interest does not include:

(A) Any payment which has as a basis of calculation no apparent business motive other than distinguishing among recipients of payments on the basis of the amount of their actual, estimated or anticipated referrals;

(B) Any payment which varies according to the relative amount of referrals by the different recipients of similar payments; or

(C) A payment based on an ownership, partnership or joint venture share which has been adjusted on the basis of previous relative referrals by recipients of similar payments.

(iii) Neither the mere labeling of a thing of value, nor the fact that it may be calculated pursuant to a corporate or partnership organizational document or a franchise agreement, will determine whether it is a *bona fide* return on an ownership interest or franchise relationship. Whether a thing of value is such a return will be determined by analyzing facts and circumstances on a case by case basis.

(iv) A return on franchise relationship may be a payment to or from a franchisee but it does not include any payment which is not based on the franchise agreement, nor any payment which varies according to the number or amount of referrals by the franchisor or franchisee or which is based on a

franchise agreement which has been adjusted on the basis of a previous number or amount of referrals by the franchiser or franchisees. A franchise agreement may not be constructed to insulate against kickbacks or referral fees.

(c) *Definitions.* As used in this section:

Associate is defined in section 3(8) of RESPA (12 U.S.C. 2602(8)).

Affiliate relationship means the relationship among business entities where one entity has effective control over the other by virtue of a partnership or other agreement or is under common control with the other by a third entity or where an entity is a corporation related to another corporation as parent to subsidiary by an identity of stock ownership.

Beneficial ownership means the effective ownership of an interest in a provider of settlement services or the right to use and control the ownership interest involved even though legal ownership or title may be held in another person's name.

Control, as used in the definitions of "associate" and "affiliate relationship," means that a person:

(i) Is a general partner, officer, director, or employer of another person;

(ii) Directly or indirectly or acting in concert with others, or through one or more subsidiaries, owns, holds with power to vote, or holds proxies representing, more than 20 percent of the voting interests of another person;

(iii) Affirmatively influences in any manner the election of a majority of the directors of another person; or

(iv) Has contributed more than 20 percent of the capital of the other person.

Direct ownership means the holding of legal title to an interest in a provider of settlement service except where title is being held for the beneficial owner.

Franchise is defined in FTC regulation 16 CFR 436.1(h).

Franchisor is defined in FTC regulation 16 CFR 436.1(k).

Franchisee is defined in FTC regulation 16 CFR 436.1(i).

FTC means the Federal Trade Commission.

Person who is in a position to refer settlement service business means any real estate broker or agent, lender, mortgage broker, builder or developer, attorney, title company, title agent, or other person deriving a significant portion of his or her gross income from providing settlement services.

(d) *Recordkeeping.* Any documents provided pursuant to this section shall be retained for 5 years after the date of execution.

(e) *Appendix B of this part.* Illustrations in appendix B of this part demonstrate some of the requirements of this section.

Back to Top

§1024.16 Title companies.

No seller of property that will be purchased with the assistance of a federally related mortgage loan shall violate section 9 of RESPA (12 U.S.C. 2608). Section 1024.2 defines "required use" of a provider of a settlement service.

Back to Top

Sections 1024.17 through Section 1024.41, and Appendix A omitted from these materials.

Appendix B to Part 1024—Illustrations of Requirements of RESPA

The following illustrations provide additional guidance on the meaning and coverage of the provisions of RESPA. Other provisions of Federal or state law may also be applicable to the practices and payments discussed in the following illustrations.

1. *Facts:* A, a provider of settlement services, provides settlement services at abnormally low rates or at no charge at all to B, a builder, in connection with a subdivision being developed by B. B agrees to refer purchasers of the completed homes in the subdivision to A for the purchase of settlement services in connection with the sale of individual lots by B.

Comments: The rendering of services by A to B at little or no charge constitutes a thing of value given by A to B in return for the referral of settlement services business, and both A and B are in violation of section 8 of RESPA.

2. *Facts:* B, a lender, encourages persons who receive federally related mortgage loans from it to employ A, an attorney, to perform title searches and related settlement services in connection with their transaction. B and A have an understanding that in return for the referral of this business A provides legal services to B or B's officers or employees at abnormally low rates or for no charge.

Comments: Both A and B are in violation of section 8 of RESPA. Similarly, if an attorney gives a portion of his or her fees to another attorney, a lender, a real estate broker or any other provider of settlement services, who had referred prospective clients to the attorney, section 8 would be violated by both persons.

3. *Facts:* A, a real estate broker, obtains all necessary licenses under state law to act as a title insurance agent. A refers individuals who are purchasing homes in transactions in which A participates as a broker to B, an unaffiliated title company, for the purchase of title insurance services. A performs minimal, if any, title services in connection with the issuance of the title insurance policy (such as placing an application with the title company). B pays A a commission (or A retains a portion of the title insurance premium) for the transactions or alternatively B receives a portion of the premium paid directly from the purchaser.

Comments: The payment of a commission or portion of the title insurance premium by B to A, or receipt of a portion of the payment for title insurance under circumstances where no substantial services are being performed by A, is a violation of section 8 of RESPA. It makes no difference whether the payment

comes from B or the purchaser. The amount of the payment must bear a reasonable relationship to the services rendered. Here A really is being compensated for a referral of business to B.

4. *Facts:* A is an attorney who, as a part of his legal representation of clients in residential real estate transactions, orders and reviews title insurance policies for his clients. A enters into a contract with B, a title company, to be an agent of B under a program set up by B. Under the agreement, A agrees to prepare and forward title insurance applications to B, to re-examine the preliminary title commitment for accuracy and if he chooses to attempt to clear exceptions to the title policy before closing. A agrees to assume liability for waiving certain exceptions to title, but never exercises this authority. B performs the necessary title search and examination work, determines insurability of title, prepares documents containing substantive information in title commitments, handles closings for A's clients and issues title policies. A receives a fee from his client for legal services and an additional fee for his title agent "services" from the client's title insurance premium to B.

Comments: A and B are violating section 8 of RESPA. Here, A's clients are being double billed because the work A performs as a "title agent" is that which he already performs for his client in his capacity as an attorney. For A to receive a separate payment as a title agent, A must perform necessary core title work and may not contract out the work. To receive additional compensation as a title agent for this transaction, A must provide his client with core title agent services for which he assumes liability, and which includes at a minimum, the evaluation of the title search to determine insurability of the title, and the issuance of a title commitment where customary, the clearance of underwriting objections, and the actual issuance of the policy or policies on behalf of the title company. A may not be compensated for the mere re-examination of work performed by B. Here, A is not performing these services and may not be compensated as a title agent under section 8(c)(1)(B). Referral fees or splits of fees may not be disguised as title agent commissions when the core title agent work is not performed. Further, because B created the program and gave A the opportunity to collect fees (a thing of value) in exchange for the referral of settlement service business, it has violated section 8 of RESPA.

5. *Facts:* A, a "mortgage originator," receives loan applications, funds the loans with its own money or with a wholesale line of credit for which A is liable, and closes the loans in A's own name. Subsequently, B, a mortgage lender, purchases the loans and compensates A for the value of the loans, as well as for any mortgage servicing rights.

Comments: Compensation for the sale of a mortgage loan and servicing rights constitutes a secondary market transaction, rather than a referral fee, and is beyond the scope of section 8 of RESPA. For purposes of section 8, in determining whether a *bona fide* transfer of the loan obligation has taken place, the Bureau examines the real source of funding, and the real interest of the named settlement lender.

6. *Facts.* A, a credit reporting company, places a facsimile transmission machine (FAX) in the office of B, a mortgage lender, so that B can easily transmit requests for credit reports and A can respond. A supplies the FAX machine at no cost or at a reduced rental rate based on the number of credit reports ordered.

Comments: Either situation violates section 8 of RESPA. The FAX machine is a thing of value that A provides in exchange for the referral of business from B. Copying machines, computer terminals, printers, or other like items which have general use to the recipient and which are given in exchange for referrals of business also violate RESPA.

7. *Facts:* A, a real estate broker, refers title business to B, a company that is a licensed title agent for C, a title insurance company. A owns more than 1% of B. B performs the title search and examination, makes determinations of insurability, issues the commitment, clears underwriting objections, and issues a policy of title insurance on behalf of C, for which C pays B a commission. B pays annual dividends to its owners, including A, based on the relative amount of business each of its owners refers to B.

Comments: The facts involve an affiliated business arrangement. The payment of a commission by C to B is not a violation of section 8 of RESPA if the amount of the commission constitutes reasonable compensation for the services performed by B for C. The payment of a dividend or the giving of any other thing of value by B to A that is based on the amount of business referred to B by A does not meet the affiliated business agreement exemption provisions and such actions violate section 8. Similarly, if the amount of stock held by A in B (or, if B were a partnership, the distribution of partnership profits by B to A) varies based on the amount of business referred or expected to be referred, or if B retained any funds for subsequent distribution to A where such funds were generally in proportion to the amount of business A referred to B relative to the amount referred by other owners, such arrangements would violate section 8. The exemption for controlled business arrangements would not be available because the payments here would not be considered returns on ownership interests. Further, the required disclosure of the affiliated business arrangement and estimated charges have not been provided.

8. *Facts:* Same as illustration 7, but B pays annual dividends in proportion to the amount of stock held by its owners, including A, and the distribution of annual dividends is not based on the amount of business referred or expected to be referred.

Comments: If A and B meet the requirements of the affiliated business arrangement exemption there is not a violation of RESPA. Since the payment is a return on ownership interests, A and B will be exempt from section 8 if (1) A also did not require anyone to use the services of B, and (2) A disclosed its ownership interest in B on a separate disclosure form and provided an estimate of B's charges to each person referred by A to B (see appendix D of this part), and (3) B makes no payment (nor is there any other thing of value exchanged) to A other than dividends.

9. *Facts:* A, a franchisor for franchised real estate brokers, owns B, a provider of settlement services. C, a franchisee of A, refers business to B.

Comments: This is an affiliated business arrangement. A, B and C will all be exempt from section 8 if C discloses its franchise relationship with the owner of B on a separate disclosure form and provides an estimate of B's charges to each person referred to B (see appendix D of this part) and C does not require anyone to use B's services and A gives no thing a value to C under the franchise agreement (such as an adjusted level of franchise payment based on the referrals), and B makes no payments to A other than

dividends representing a return on ownership interest (rather than, *e.g.,* an adjusted level of payment being based on the referrals). Nor may B pay C anything of value for the referral.

10. *Facts:* A is a real estate broker who refers business to its affiliate title company B. A makes all required written disclosures to the homebuyer of the arrangement and estimated charges and the homebuyer is not required to use B. B refers or contracts out business to C who does all the title work and splits the fee with B. B passes its fee to A in the form of dividends, a return on ownership interest.

Comments: The relationship between A and B is an affiliated business arrangement. However, the affiliated business arrangement exemption does not provide exemption between an affiliated entity, B, and a third party, C. Here, B is a mere "shell" and provides no substantive services for its portion of the fee. The arrangement between B and C would be in violation of section 8(a) and (b). Even if B had an affiliate relationship with C, the required exemption criteria have not been met and the relationship would be subject to section 8.

11. *Facts:* A, a mortgage lender is affiliated with B, a title company, and C, an escrow company and offers consumers a package of mortgage title and escrow services at a discount from the prices at which such services would be sold if purchased separately. Neither A, B, nor C requires consumers to purchase the services of their sister companies and each company sells such services separately and as part of the package. A also pays its employees (*e.g.,* loan officers, secretaries, *etc.*) a bonus for each loan, title insurance or closing that A's employees generate for A, B, or C respectively. A pays such employee bonuses out of its own funds and receives no payments or reimbursements for such bonuses from B or C. At or before the time that customers are told by A or its employees about the services offered by B and C and/or the package of services that is available, the customers are provided with an affiliated business disclosure form.

Comments: A's selling of a package of settlement services at a discount to a settlement service purchaser does not violate section 8 of RESPA. A's employees are making appropriate affiliated business disclosures and since the services are available separately and as part of a package, there is not "required use" of the additional services. A's payments of bonuses to its employees for the referral of business to A or A's affiliates, B and C, are exempt from section 8 under §1024.14(g)(1). However, if B or C reimbursed A for any bonuses that A paid to its employees for referring business to B or C, such reimbursements would violate section 8. Similarly, if B or C paid bonuses to A's employees directly for generating business for them, such payments would violate section 8.

12. *Facts.* A is a mortgage broker who provides origination services to submit a loan to a lender for approval. The mortgage broker charges the borrower a uniform fee for the total origination services, as well as a direct up-front charge for reimbursement of credit reporting, appraisal services, or similar charges.

Comment. The mortgage broker's fee must be reflected in the Good Faith Estimate and on the HUD-1 Settlement Statement. Other charges which are paid for by the borrower and paid in advance are listed as P.O.C. on the HUD-1 Settlement Statement, and reflect the actual provider charge for such services.

13. *Facts.* A is a dealer in home improvements who has established funding arrangements with several lenders. Customers for home improvements receive a proposed contract from A. The proposal requires that customers both execute forms authorizing a credit check and employment verification, and frequently, execute a dealer consumer credit contract secured by a lien on the customer's (borrower's) 1- to 4-family residential property. Simultaneously with the completion and certification of the home improvement work, the note is assigned by the dealer to a funding lender.

Comments. The loan that is assigned to the funding lender is a loan covered by RESPA, when a lien is placed on the borrower's 1- to 4-family residential structure. The dealer loan or consumer credit contract originated by a dealer is also a RESPA-covered transaction, except when the dealer is not a "creditor" under the definition of "federally related mortgage loan" in §1024.2. The lender to whom the loan will be assigned is responsible for assuring that the lender or the dealer delivers to the borrower a Good Faith Estimate of closing costs consistent with Regulation X, and that the HUD-1 or HUD-1A Settlement Statement is used in conjunction with the settlement of the loan to be assigned. A dealer who, under §1024.2, is covered by RESPA as a creditor is responsible for the Good Faith Estimate of Closing Costs and the use of the appropriate settlement statement in connection with the loan.

[76 FR 78981, Dec. 20, 2011, as amended at 78 FR 80105, Dec. 31, 2013]

Appendices C through MS-3 omitted from these materials.

12 CFR § 1026.36 Prohibited acts or practices and certain requirements for credit secured by a dwelling.

(a) Definitions —

(1) Loan originator.

(i) For purposes of this section, the term “loan originator” means a person who, in expectation of direct or indirect compensation or other monetary gain or for direct or indirect compensation or other monetary gain, performs any of the following activities: takes an application, offers, arranges, assists a consumer in obtaining or applying to obtain, negotiates, or otherwise obtains or makes an extension of consumer credit for another person; or through advertising or other means of communication represents to the public that such person can or will perform any of these activities. The term “loan originator” includes an employee, agent, or contractor of the creditor or loan originator organization if the employee, agent, or contractor meets this definition. The term “loan originator” includes a creditor that engages in loan origination activities if the creditor does not finance the transaction at consummation out of the creditor's own resources, including by drawing on a **bona fide** warehouse line of credit or out of deposits held by the creditor. All creditors that engage in any of the foregoing loan origination activities are loan originators for purposes of paragraphs (f) and (g) of this section. The term does not include:

(A) A person who does not take a consumer credit application or offer or negotiate credit terms available from a creditor, but who performs purely administrative or clerical tasks on behalf of a person who does engage in such activities.

(B) An employee of a manufactured home retailer who does not take a consumer credit application, offer or negotiate credit terms available from a creditor, or advise a consumer on credit terms (including rates, fees, and other costs) available from a creditor.

(C) A person that performs only real estate brokerage activities and is licensed or registered in accordance with applicable State law, unless such person is compensated by a creditor or loan originator or by any agent of such creditor or loan originator for a particular consumer credit transaction subject to this section.

(D) A seller financer that meets the criteria in paragraph (a)(4) or (a)(5) of this section, as applicable.

(E) A servicer or servicer's employees, agents, and contractors who offer or negotiate terms for purposes of renegotiating, modifying, replacing, or subordinating principal of existing mortgages where consumers are behind in their payments, in default, or have a reasonable likelihood of defaulting or falling behind. This exception does not apply, however, to a servicer or servicer's employees, agents, and contractors who offer or negotiate a transaction that constitutes a refinancing under § 1026.20(a) or obligates a different consumer on the existing debt.

(ii) An “individual loan originator” is a natural person who meets the definition of “loan originator” in paragraph (a)(1)(i) of this section.

(iii) A “loan originator organization” is any loan originator, as defined in paragraph (a)(1)(i) of this section, that is not an individual loan originator.

(2) Mortgage broker. For purposes of this section, a mortgage broker with respect to a particular transaction is any loan originator that is not an employee of the creditor.

(3) Compensation. The term “compensation” includes salaries, commissions, and any financial or similar incentive.

(4) Seller financers; three properties. A person (as defined in § 1026.2(a)(22)) that meets all of the following criteria is not a loan originator under paragraph (a)(1) of this section:

(i) The person provides seller financing for the sale of three or fewer properties in any 12-month period to purchasers of such properties, each of which is owned by the person and serves as security for the financing.

(ii) The person has not constructed, or acted as a contractor for the construction of, a residence on the property in the ordinary course of business of the person.

(iii) The person provides seller financing that meets the following requirements:

(A) The financing is fully amortizing.

(B) The financing is one that the person determines in good faith the consumer has a reasonable ability to repay.

(C) The financing has a fixed rate or an adjustable rate that is adjustable after five or more years, subject to reasonable annual and lifetime limitations on interest rate increases. If the financing agreement has an adjustable rate, the rate is determined by the addition of a margin to an index rate and is subject to reasonable rate adjustment limitations. The index the adjustable rate is based on is a widely available index such as indices for U.S. Treasury securities or LIBOR.

Official interpretation of 36(a)(4) Seller Financers; Three Properties

*1. **Reasonable ability to repay safe harbors.** A person in good faith determines that the consumer to whom the person extends seller financing has a reasonable ability to repay the obligation if the person complies with § 1026.43(c) of this part or complies with the alternative criteria discussed in this comment. If the consumer intends to make payments from income, the person considers evidence of the consumer's current or reasonably expected income. If the consumer intends to make payments with income from employment, the person considers the consumer's earnings, which may be reflected in payroll statements or earnings statements, IRS Form W-2s or similar IRS forms used for reporting wages or tax withholding, or military Leave and Earnings Statements. If the consumer intends to make payments from other income, the person*

considers the consumer's income from sources such as a Federal, State, or local government agency providing benefits and entitlements. If the consumer intends to make payments from income earned from assets, the person considers the relevant assets, such as funds held in accounts with financial institutions, equity ownership interests, or rental property. However, the value of the dwelling that secures the financing does not constitute evidence of the consumer's ability to repay. In considering these and other potential sources of income to determine in good faith that the consumer has a reasonable ability to repay the obligation, the person making that determination may rely on copies of tax returns the consumer filed with the Internal Revenue Service or a State taxing authority.

2. Adjustable rate safe harbors.

i. Annual rate increase. *An annual rate increase of two percentage points or less is reasonable.*

ii. Lifetime increase. *A lifetime limitation of an increase of six percentage points or less, subject to a minimum floor of the person's choosing and maximum ceiling that does not exceed the usury limit applicable to the transaction, is reasonable.*

(5) Seller financers; one property. A natural person, estate, or trust that meets all of the following criteria is not a loan originator under paragraph (a)(1) of this section:

(i) The natural person, estate, or trust provides seller financing for the sale of only one property in any 12-month period to purchasers of such property, which is owned by the natural person, estate, or trust and serves as security for the financing.

(ii) The natural person, estate, or trust has not constructed, or acted as a contractor for the construction of, a residence on the property in the ordinary course of business of the person.

(iii) The natural person, estate, or trust provides seller financing that meets the following requirements:

(A) The financing has a repayment schedule that does not result in negative amortization.

(B) The financing has a fixed rate or an adjustable rate that is adjustable after five or more years, subject to reasonable annual and lifetime limitations on interest rate increases. If the financing agreement has an adjustable rate, the rate is determined by the addition of a margin to an index rate and is subject to reasonable rate adjustment limitations. The index the adjustable rate is based on is a widely available index such as indices for U.S. Treasury securities or LIBOR.

Title XXXVII

INSURANCE

Chapter 626

INSURANCE FIELD REPRESENTATIVES AND OPERATIONS

626.9541 Unfair methods of competition and unfair or deceptive acts or practices defined.-

(1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS.- The following are defined as unfair methods of competition and unfair or deceptive acts or practices:

(h) Unlawful rebates.-

3.a. No title insurer, or any member, employee, attorney, agent, or agency thereof, shall pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as inducement to title insurance, or after such insurance has been effected, any rebate or abatement of the premium or any other charge or fee, or provide any special favor or advantage, or any monetary consideration or inducement whatever.

b. Nothing in this subparagraph shall be construed as prohibiting the payment of fees to attorneys at law duly licensed to practice law in the courts of this state, for professional services, or as prohibiting the payment of earned portions of the premium to duly appointed agents or agencies who actually perform services for the title insurer. Nothing in this subparagraph shall be construed as prohibiting a rebate or abatement of an attorney's fee charged for professional services, or that portion of the premium that is not required to be retained by the insurer pursuant to s. 627.782(1), or any other agent charge or fee to the person responsible for paying the premium, charge, or fee.

c. No insured named in a policy, or any other person directly or indirectly connected with the transaction involving the issuance of such policy, including, but not limited to, any mortgage broker, real estate broker, builder, or attorney, any employee, agent, agency, or representative thereof, or any other person whatsoever, shall knowingly receive or accept, directly or indirectly, any rebate or abatement of any portion of the title insurance premium or of any other charge or fee or any monetary consideration or inducement whatsoever, except as set forth in sub-subparagraph b.; provided, in no event shall any portion of the attorney's fee, any portion of the premium that is not required to be retained by the insurer pursuant to s. 627.782(1), any agent charge or fee, or any other monetary consideration or inducement be paid directly or indirectly for the referral of title insurance business.

(m) Advertising and promotional gifts and charitable contributions permitted.-

2. The provisions of paragraph (f), paragraph (g), or paragraph (h) do not prohibit a title insurance agent or title insurance agency, as those terms are defined in s. 626.841, or a title insurer, as defined in s. 627.7711, from giving to insureds, prospective insureds, or others, for the purpose of advertising, any article of merchandise having a value of not more than $25.

69B-186.010 Unlawful Rebates and Inducements Related to Title Insurance Transactions.

(1) The purpose of this rule is to interpret paragraph 626.9541(1)(h), F.S., which provides that it is an unfair method of competition and unfair or deceptive act or practice prohibited by section 626.9521, F.S., to engage in certain activities related to title insurance.

(2) All lists contained within this rule are intended as examples and are not exhaustive. This rule does not prohibit inducements or rebates provided by filed or approved rates or rating manuals, advertising gifts allowed by paragraph 626.9541(1)(m), F.S., or inducements and rebates otherwise expressly allowed by law.

(3) For purposes of this rule, the term "referrer of settlement service business" means any person who is in a position to refer title insurance business incident to or part of a real estate transaction, or an associate of such person. A referrer of settlement service business may be a title insurance agent, title insurance agency, title insurance company, attorney, real estate broker, real estate agent, real estate licensee, broker associate, sales associate, mortgage banker, mortgage broker, lender, real estate developer, builder, property appraiser, surveyor, escrow agent, closing agent, or any other person or entity involved in a real estate transaction for which title insurance could be issued; or any employee, officer, director, or representative of such a person or entity.

(4) As they relate to the transaction of title insurance, the following activities, whether performed directly or indirectly, for or by any referrer of settlement service business, are inducements for the sale, placement or referral of title insurance business in violation of section 626.9521 and paragraph 626.9541(1)(h), F.S.:

(a) Facilitating any discount, reduction, credit, or paying any fee or portion of the cost of an inspection, inspection report, appraisal, or survey, including wind inspection, to or for a purchaser or prospective purchaser of title insurance.

(b) Providing membership in any organization, society, association, guild, union, alliance or club at a discount, reduced rate, or at no cost to a referrer of settlement service business.

(c) Making or offering to make a charitable or other tax-deductible contribution on behalf of the purchaser or prospective purchaser of title insurance.

(d) Providing or offering stocks, bonds, securities, property, or any dividend or profit accruing or to accrue thereon to a referrer of settlement service business. However, the use of lawful affiliated business arrangements that are permitted under the Federal Real Estate Settlement Procedure Act would not violate this subparagraph and would be allowable under subsection (2) of this rule.

(e) Providing or offering employment to a referrer of settlement service business in exchange for the purchase of title insurance.

(f) Providing or paying for the printing of bulletins, flyers, post cards, labels, etc. that promote the business of a referrer of settlement service business.

(g) Furnishing or paying for the furnishing of office equipment (fax machines, telephones, copy machines, etc.) to a referrer of settlement service business.

(h) Providing or paying for cellular telephone contracts for a referrer of settlement service business.

(i) Providing simulated panoramic home and property tours to real estate brokers or real estate sales associates that they utilize to promote their listings.

(j) Providing or paying for gift cards or gift certificates to or for a referrer of settlement service business or to a purchaser or prospective purchaser of title insurance.

(k) Sponsoring and hosting, or paying for the sponsoring and hosting, of open houses for real estate brokers or real estate sales associates to promote their listings.

(l) Providing or paying for food, beverages, or room rentals at events designed to promote the business of a referrer of settlement service business other than the title insurance agent or agency.

(m) Paying advertising costs to advertise and promote the listings of real estate brokers or real estate sales associates via publications, signs, emails, websites, web pages, banners, or other forms of media.

(n) Providing an endorsement, designation of preferred status, approved status, or featured partner status on publications, signs, emails, websites, web pages, banners or other forms of media promoting the business of real estate brokers or real estate sales associates.

(o) Paying a referrer of settlement service business to fill out processing (order) forms in exchange for title

insurance contracts.

(p) Providing “leads” or mailing lists to or on behalf of a referrer of settlement service business at no cost or a reduced cost.

(q) Entering into any arrangement to provide unearned compensation to a referrer of settlement service business.

(r) Providing, or offering to provide, non-title services, without a charge that is commensurate with the actual cost, to a referrer of settlement service business.

(s) Waiving of fees, costs, or premium for title updates or endorsements requested after the issuance of the title insurance policy.

(t) Assuming any party’s responsibility to provide refunds to consumers under applicable laws and regulations.

(5) Except as prohibited by section 626.9541, F.S., expenditures for the following are not in violation of section 626.9521 and paragraph 626.9541(1)(h), F.S., or in violation of this rule:

(a) Promotional items with a company logo of the title insurance agent or agency, with a value not to exceed the amount allowed by paragraph 626.9541(1)(m), F.S., per item. “Promotional item” does not include a gift certificate, gift card, or other item that has a specific monetary value on its face, or that may be exchanged for any other item having a specific monetary value.

(b) Furnishing educational materials, such as fliers, brochures, pamphlets, or Frequently Asked Question sheets, exclusively related to title insurance for a referrer of settlement service business that are not conditioned on the referral of business and that do not involve the defraying of expenses that otherwise would be incurred by a referrer of settlement service business.

(c) Compensation paid to a referrer of settlement service business for goods and services actually performed at amounts not exceeding the reasonable fair market value of the goods and services and that is not intended to induce the referral of title insurance business.

(d) Any advertising or marketing activities that directly promote the title insurance business of the title insurance agent or agency, which may include joint participation in marketing with another party provided that the agent or agency pays the proportionate share or fair market value of the costs, and does not violate paragraph (5)(a) of this rule.

(e) A payment by a title insurance company to its duly appointed agent for services actually performed in the issuance of a title insurance policy.

(f) A payment to any person of a bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed.

(6) A licensed and appointed title insurance agent is not prohibited under this rule to affix a notice to any contract or agreement, stating, “The terms of this contract are agreed to, but only to the extent that they do not violate the provisions of rule 69B-186.010, F.A.C., or paragraph 626.9541(1)(h), F.S.,” or substantially similar language.

Rulemaking Authority 624.308(1), 626.9611 FS. Law Implemented 626.9521, 626.9541(1)(h), (m) FS. History–New 2-9-16, Amended 5-13-18.

CHAPTER 69O-186
TITLE INSURANCE RATES

69O-186.002 Approved Form
69O-186.003 Title Insurance Rates
69O-186.004 Classification of "Certificates of Title" as a Respective Type of Title Insurance Contract and Promulgation of a Specific Rate Schedule Applicable Thereto
69O-186.005 Premium Schedule Applicable to "Truth in Lending" and Other Endorsements
69O-186.007 Title Insurance Limited to Coverage of Real Property
69O-186.008 Escrow Requirements
69O-186.009 Reconciliation of Escrow Accounts
69O-186.010 Insurer's Assumption of Certain Liabilities (Repealed)
69O-186.013 Title Insurance Statistical Gathering: Licensed Title Insurance Agencies and Florida Retail Offices of Direct-Writing Title Insurance Underwriters
69O-186.014 Title Insurance Statistical Gathering – Title Insurance Underwriters
69O-186.015 Title Insurance Agency Collateral Substitution
69O-186.017 Certificate of Mortgage Release (Repealed)

69O-186.002 Approved Form.

Any form of written notice given by the title insurers, agents, members, employees thereof, or by agents, employees, officials of lending or other institutions to the purchaser-mortgagor in substantially the following language shall be deemed in compliance with Section 627.798, F.S.:

NOTICE TO PURCHASER-MORTGAGOR

Pursuant to Section 627.798, F.S., notice is hereby given by _____ (Name of Title Insurer) to the undersigned purchaser-mortgagor that a mortgagee title insurance policy is to be issued to your mortgagee lender, and that such policy does not provide title insurance protection to you as the owner of the real estate you are purchasing.

The undersigned has read the above notice and understands that such mortgage title insurance policy to be issued to the mortgagee lender does not provide title insurance protection to the undersigned as owner.

Dated this ____ day of ____, 20___.

_____
(Signature of Purchaser)

Rulemaking Authority 624.308, 627.798 FS. Law Implemented 624.307(1), 627.778(1)(a), 627.7825 FS. History–New 9-23-69, Repromulgated 12-24-74, Formerly 4-21.02, Amended 6-25-86, Formerly 4-21.002, Amended 1-27-02, Formerly 4-186.002.

69O-186.003 Title Insurance Rates.

The following are risk rate premiums to be charged by title insurers in this state for the respective types of title insurance contracts. To compute any insurance premium on a fractional thousand of insurance (except as to minimum premiums), multiply such fractional thousand by the rate per thousand applicable, considering any fraction of $100.00 as a full $100.00.

(1) Original Title Insurance Rates.

(a) For owner and leasehold title insurance:

1.a. The Premium for the original owner's or for leasehold insurance shall be:

	Per Thousand	Minimum Insurer Retention
From $0 to $100,000 of liability written	$5.75	30%
From $100,000 to $1 million, add	$5.00	30%
Over $1 million to and up to $5 million, add	$2.50	35%
Over $5 million and up to $10 million, add	$2.25	40%
Over $10 million, add	$2.00	40%

b. The minimum premium for all conveyances except multiple conveyances shall be $100.

c. The minimum premium for multiple conveyances on the same property shall be $60.

2. In all cases the owner's policy shall be issued for the full insurable value of the premises.

(b) For mortgage title insurance:

1.a. The premium for the original mortgage title insurance shall be:

	Per Thousand	Minimum Insurer Retention
From $0 to $100,000 of liability written	$5.75	30%
From $100,000 to $1 million, add	$5.00	30%
Over $1 million and up to $5 million, add	$2.50	35%
Over $5 million and up to $10 million, add	$2.25	40%
Over $10 million, add	$2.00	40%

b. The minimum premium for all conveyances except multiple conveyances shall be $100.

c. The minimum premium for multiple conveyances on the same property shall be $60.

2. A mortgage title insurance policy shall not be issued for an amount less than the full principal debt. A policy may, however, be issued for an amount up to 25 percent in excess of the principal debt to cover interest and foreclosure costs.

(2) Reissue Rates.

(a)1. The reissue premium charge for owner's, mortgage, and leasehold title insurance policies shall be:

	Per Thousand
Up to $100,000 of liability written	$3.30
Over $100,000 and up to $1 million, add	$3.00
Over $1 million and up to $10 million, add	$2.00
Over $10 million, add	$1.50

2. The minimum premium shall be $100.00.

(b) Provided a previous owner's policy was issued insuring the seller or the mortgagor in the current transaction and that both the reissuing agent and the reissuing underwriter retain for their respective files copies of the prior owner's policy, the reissue premium rates in paragraph (a) shall apply to:

1. Policies on real property which is unimproved except for roads, bridges, drainage facilities, and utilities if the current owner's title has been insured prior to the application for a new policy;

2. Policies issued with an effective date of less than 3 years after the effective date of the policy insuring the seller or mortgagor in the current transaction; or

3. Mortgage policies issued on refinancing of property insured by an original owner's policy which insured the title of the current mortgagor.

(c) Any amount of new insurance, in the aggregate, in excess of the amount under the previous policy shall be computed at the original owner's or leasehold rates, as provided in subsection (1).

(3) New Home Purchase Discount.

(a) Provided the seller has not leased or occupied the premises, the original premium of a policy on the first sale of residential property with a one to four family improvement that is granted a certificate of occupancy shall be discounted by the amount of premium paid for any prior loan policies insuring the lien of a mortgage executed by the seller on the premises.

(b) In the case of prior loan policies insuring the lien of a mortgage on multiple units or parcels, the discount shall be prorated by dividing the amount of the premium paid for the prior loan policies by the total number of units or parcels without regard to varying unit or parcel value.

(c) The minimum new home purchase premium shall be $200. The new home purchase discount may not be combined with any other reduction from original premium rates provided for in this section.

(d) The insurer shall reserve for unearned premiums only on the excess amount of the policy over the amount of the actual or prorated amount of the prior loan policy.

(4) Substitution Loan Rates. The following risk premium for substitution loans shall apply:

(a) When the same borrower and the same lender make a substitution loan on the same property, the title to which was insured by an insurer in connection with the original loan.

Age of Original Loan	Premium Rates
3 years or under	30% of original rates

From 3 to 4 years	40% of original rates
From 4 to 5 years	50% of original rates
From 5 to 10 years	60% of original rates
Over 10 years	100% of original rates
Minimum premium	$100.00

(b) At the time a substitution loan is made, the unpaid principal balance of the previous loan will be considered the amount of insurance in force on which the foregoing rates shall be calculated. To these rates shall be added the regular rates in the applicable schedules for any new insurance, that is, the difference between the unpaid principal balance of the original loan and the amount of the new loan.

(c) In the case of a substitution loan of $250,000 or more, when the same borrower and any lender make a substitution loan on the same property, the title to which was insured by an insurer in connection with the previous loan, the premium for such substitution loans shall be the rates as set forth in paragraphs (a) and (b).

(5) Simultaneous Issue Rates. The risk premium for simultaneous issues shall be as follows:

(a) When an owner's and a mortgagee's policy or policies covering identical land are to be issued simultaneously the risk premiums applicable for the owner's policy shall be the regular owner's rate as provided for herein. The rate for the mortgage policy or policies so simultaneously issued will be a minimum $25.00 for an amount of insurance not in excess of the owner's policy. The risk premium on the amount of the mortgage policy or policies in excess of the owner's policy shall be figured at the regular original title insurance rates for mortgage policies.

(b) The title must be examined to a date which includes the filing for record of both the deed to the mortgagor and the mortgage itself. Both policies must bear identical dates and the owner's policy must show the mortgage as an exception under Schedule "B" thereof. It is not essential that the property be acquired simultaneously with the giving of the mortgage, but this rate, where applicable, has reference to the simultaneous issuance of an owner's and mortgagee's policy or policies.

(c) When an owner's and leasehold policy covering identical land are to be issued simultaneously, the risk premium applicable for the owner's policy shall be the regular owner's rate as provided for herein. The rate for the leasehold policy will be 30% of the rate for the owner's policy with which it is being issued simultaneously up to the amount of said owner's policy. The risk premium on the amount of a leasehold policy in excess of the owner's policy will be figured at the regular rate for owner's policies in the applicable schedule.

(6) Contract Purchaser – Lessee Rates. If a contract purchaser, who has obtained a policy from an insurer insuring his contract and thereafter obtains a deed given in pursuance of the contract makes application for an owner's policy and surrenders the policy, insuring his contract; or a lessee who has obtained a leasehold policy of an insurer, insuring his lease and thereafter purchases the property, makes application for an owner's policy and surrenders such policy, the re-issue risk rate shall be:

Up to $100,000 of liability written	25% of the rates set forth in subsection (1)
Over $100,000 add	20% of the rates set forth in subsection (1)
Minimum premium shall be	$100.00

(7) Binders and Commitments. A binder of title insurance, or a commitment to insure a title or risk, imposes certain obligations and liabilities upon a title insurer and agents with consequent benefits for an insured. Since such binders and commitments are being increasingly utilized in transactions involving title insurance, it is deemed necessary that in accordance with Section 627.7831, F.S., a portion of the risk premium must be charged for such binder or commitment when it is issued, except for transactions involving residential properties. The risk premium charge for binders and commitments shall be credited to the risk premium due on the policy to be issued.

(8) Construction Loans Secured by Revolving Notes and Mortgages. When a mortgage policy is issued to insure a mortgage securing periodic advances of the loan proceeds to finance improvements on real property, an additional risk rate premium shall be charged for the value of each new parcel of real property added to the policy's coverage after its original issuance.

(9) Minimum Retention of Premium by Insurer.

(a) A title insurer shall receive and retain at least 30% of the risk premium for policies sold by agents in accordance with Minimum Insurance Retention Schedule, including risk premium for endorsements, and it shall not be decreased, directly or indirectly, by an insurer providing services to any agent for less than actual cost.

(b) Any retention of premium by an insurer in excess of 30% shall not be decreased, directly or indirectly, by providing services

to an agent for less than actual cost.

(c) The required retention of funds must be remitted to the insurer by the agent at least monthly, and until remitted these funds are "collected funds" subject to the accountability provisions of Rule 69O-186.009, F.A.C.

(10) Effect of Amendments to Risk Premium. Any change in the risk premium due to an amendment to this rule shall not affect policies for which a binder or commitment to issue a policy has been issued prior to the effective date of the amendment.

(11) Unlawful Rebates or Abatement of Charges.

(a) No title insurer, title insurance agent or agency, including attorney agent, shall decrease the risk premium by an illegal rebate or abatement of charges for abstracting, examinations, or closing charges. At least actual cost must be charged for related title services in addition to the adopted risk premium.

(b) Charges for related title services (title search, examination, and closing) shall be shown separately on the closing statement, and shall, at a minimum, show title search charges, examination fees, and closing charges. The risk premium as defined by Section 627.7711(2), F.S., and as provided in Section 627.780(1), F.S., shall be shown separately on the closing statement.

(c) Any ongoing or standing offer of gifts, compensation or special services to the same person or customer on a continuing basis as an inducement to referring title insurance transactions is prohibited.

(12) Subsections (1) through (4) of this rule shall become effective July 1, 2002. The remainder of the rule shall become effective 20 days after adoption.

Rulemaking Authority 624.308(1), 626.9611, 627.782, 627.7825 FS. Law Implemented 624.307(1), 626.9541(1)(h)3.a., 627.777, 627.782, 627.7825, 627.783, 627.7831, 627.7841, 627.7845 FS. History–New 9-17-71, Amended 12-28-73, Repromulgated 12-24-74, Amended 4-12-82, 12-23-82, Formerly 4-21.03, Amended 6-25-86, 2-26-90, 7-26-90, 2-27-91, Formerly 4-21.003, Amended 2-13-95, 1-27-02, Formerly 4-186.003.

69O-186.004 Classification of "Certificates of Title" as a Respective Type of Title Insurance Contract and Promulgation of a Specific Rate Schedule Applicable Thereto.

(1) The initial Title Insurance Rate Promulgation Order promulgated on March 7, 1967, pursuant to the provisions of Section 627.0956, F.S. (Rule 69O-186.003, F.A.C.), did not recognize Certificates of Title (commonly identified as Department of the Army Engineers Form 903, dated December 1, 1963, and Department of the Army Engineers Form 1017, dated April 1, 1962) and other substantially similar contracts used by governmental agencies, federal or state, in the acquisition of real property and easements for non-proprietary governmental uses and purposes, as "a respective type of title insurance contract" to which a specific rate schedule would be applicable.

(2) Such Certificates of Title and substantially similar contracts differ from "standard" title insurance contracts contemplated in the initial rate order in that the risk assumed is substantially confined to matters of record only and that in transactions with many such governmental agencies statutes of limitation constitute a bar to action for inverse condemnation.

(3) These distinctions warrant promulgation of a lesser risk premium applicable to such Certificates of Title and substantially similar contracts.

(4) Such a promulgation shall apply only to and be limited to those Certificates of Title and substantially similar contracts used by governmental agencies in the acquisition of real property and easements for a governmental or public purpose for public use as distinguished from such acquisitions by such agencies in the exercise of their proprietary functions.

(5) Transactions involving such Certificates of Title for such purposes usually involved the issuance of several interim title insurance certificates, sometimes referred to as title insurance binders, the cost factor of which should be recognized in the allowance of an interim certificate charge for each certificate issued subsequent to the initial certificate, sometimes referred to as the preliminary certificate, in addition to the risk premium charge.

(6) In recognition of the above factors the following risk premium schedule and interim binder or certificate charges are hereby promulgated as being applicable only to such Certificates of Title and substantially similar contracts when used by governmental agencies, state or federal, for the acquisition of real property and easements for a governmental or public purpose and use as distinguished from a proprietary purpose and use:

Amount of Liability	Per Thousand	For Each Interim Certificate Subsequent to Initial Certificate
$0-50,000	2.25	Plus $5.00
50,000-100,000	1.75	Plus $5.00
100,000-500,000	1.50	Plus $5.00

Over 500,000	1.25	Plus $5.00

Rulemaking Authority 624.308(1) FS. Law Implemented 624.307(1), 627.782 FS. History–New 9-17-71, Amended 12-28-73, Repromulgated 12-24-74, Amended 4-12-82, 12-23-82, Formerly 4-21.04, Amended 6-25-86, 2-26-90, Formerly 4-21.004, 4-186.004.

69O-186.005 Premium Schedule Applicable to "Truth in Lending" and Other Endorsements.

(1) An additional risk exposure for title insurers has been created by the enactment into law of the Federal "Truth in Lending Act," incorporated in Title 15, United States Code Annotated, Section 1601 et seq., effective May 29, 1968.

(2) Such additional risk exposure is specifically though not exhaustively manifest in the additional risks and expenses incident to the issuance of the "Truth in Lending Endorsement" as reflected in and confined to "Endorsement Number Two of the American Land Title Association" because of the following factors:

(a) The title insurer must determine that a lien is being made for commercial purposes, other than agricultural purposes.

(b) The title insurer must determine that the borrower falls within the category of entities as set forth in Regulation "Z" promulgated by the Federal Reserve.

(c) The title insurer must determine that the home being purchased is or will be the residence of the borrower.

(d) The title insurer must determine that the mortgage being insured by the policy to which the endorsement is being attached is a first lien on the land.

(e) The title insurer must determine that proceeds of the mortgage are disbursed to the seller.

(f) The title insurer may be legally obligated to legally refute the allegations in a foreclosure action against the mortgagor that the matters shown above were not accurately determined.

(g) The penalty for failure to make such correct determination of the above factors may make the title insurer incur liability for the payment or settlement of claims thereon which would not otherwise be incurred in the absence of such Endorsement.

(3) The foregoing factors substantially increase the increment of risk, the expense, and the labor incident to the issuance of title insurance policies brought within the purview of the Truth in Lending Act by utilization of ALTA Endorsement Number Two. Such consequences have a significant potential effect on the fiscal stability of the respective title insurers and the business trust title insurer authorized to transact the business of title insurance in the State of Florida.

(4) Any potential adverse effect of such factors on the fiscal stability of said title insurers with consequent detriment to the title insuring public would be ameliorated or negated by the promulgation of a specific premium rate schedule applicable to such Truth in Lending Endorsement which would reasonably compensate the title insurers for such additional increments of risk.

(5) In recognition of the above findings and factors applicable to Truth in Lending Endorsement Number Two of the ALTA, the following premium schedule is hereby promulgated:

TEN PERCENT (10%) OF MORTGAGEE POLICY PROMULGATED RATE WITH A MINIMUM CHARGE OF TWENTY-FIVE DOLLARS ($25.00) AND A MAXIMUM CHARGE OF ONE HUNDRED DOLLARS ($100.00).

(6)(a) In recognition of the increased risk in issuing the following endorsements on a mortgage or owner's policy, as such endorsements have been approved by the Office, the minimum premium shall be $25.00 for each endorsement on any mortgage or owner's policy issued. The endorsements shall be itemized on the closing statement furnished to the insured.

1. ALTA 4/4.1 Condominium.
2. ALTA 5/5.1 Planned Unit Development.
3. ALTA 6 Renegotiable Rate.
4. ALTA 6.1 Variable Rate.
5. ALTA 6.2 Negative Amortization.
6. ALTA 7.0 Manufactured Housing.
7. ALTA 8.0/8.1 Environmental Protection Lien.
8. Revolving Credit Endorsement.

(b) The language of the Revolving Credit Endorsement shall conform to the following endorsement language:

1. Notwithstanding any terms or provisions in this policy to the contrary, the company hereby insures the insured that advances made subsequent to the Date of Policy, but within 20 years of the Date of Policy, pursuant to the terms of the mortgage described in Schedule A of this policy, shall be included within the coverage of this policy, even though the principal indebtedness may have been reduced from time to time preceding any such subsequent advances. The Company's liability under this policy shall be reduced hereafter by the filing for record by the mortgagor or his successors in title of a notice pursuant to Section 697.04(1), F.S., limiting

the maximum principal amount that may be so secured to an amount not less than the amount actually advanced at the time of such filing.

2. The Company further assures the insured that such subsequent advances shall have the same priority over liens, encumbrances and other matters disclosed by the Public Records, as do advances secured by the insured mortgage as of the Date of Policy, except for the following matters, if any, arising subsequent to the Date of Policy:

a. Federal tax liens which may be recorded against the mortgagor(s) or their successor in title more than forty-five days prior to the making of any such subsequent advances.

b. Federal tax liens which may be recorded against the mortgagor(s) or their successor in title within forty-five days of making any such subsequent advances, the existence of which are actually known to the insured prior to the making of any such subsequent advances.

c. Ad valorem real estate taxes and assessments and other government liens which are on a parity with ad valorem real estate taxes pursuant to F.S.

d. Bankruptcies of the mortgagor(s) or their successors in title prior to the making of any such subsequent advances.

e. Defects, liens, encumbrances or other matters, the existence of which are actually known to the insured prior to the making of any such subsequent advances.

3. The total liability of the company under the policy and any endorsements therein shall not exceed, in the aggregate, the face amount of the policy and sums which the Company is obligated under the conditions and stipulations thereof to pay.

4. This endorsement is made a part of the policy. It is subject to all the terms of the policy and prior endorsements. Except as expressly stated on this endorsement, the terms, dates and amount of the policy and prior endorsements are not changed."

(7)(a) Both endorsements and affirmative type coverages and their applicable risk rate premium must be approved by the Office prior to their issuance in this state. Accordingly, endorsements and affirmative type coverages are categorized as follows:

1. Permitted endorsements and/or affirmative type coverages,

2. Prohibited endorsements and/or affirmative type coverages,

3. Endorsements and/or affirmative type coverages with no specific Office approval required when there is no increased risk resulting to the insurer.

(b)1. With the exception of those endorsements listed in subsection (6) of Rule 69O-186.005, F.A.C., above, no endorsement or affirmative type coverage shall be issued except as set forth in this section.

2. If there is a change in a current adopted endorsement and the change results in a further limitation of coverage, the endorsement may be submitted to the Office for approval without an amendment to these rules.

(c) With the exception of policy forms and those endorsements listed in subsection (6) of Rule 69O-186.005, F.A.C., above, all approvals of endorsements given prior to the effective date of this rule are withdrawn. This section shall have no effect on the validity of those endorsements issued prior to the effective date of these rule amendments.

(d) All issued endorsements shall be itemized on the closing statement furnished to the insured with costs for each endorsement shown.

(e) Specific endorsements may be issued by reference to a master list of approved endorsements and have the same validity as if issued individually on each transaction so long as the language in the endorsement specifically conforms without any additions or deletions to the endorsement language as set forth in this section. Any such master list of approved endorsements shall only be issued in conjunction with a mortgage (mortgagee) title insurance policy.

(8) The following permitted endorsements and endorsement language are approved:

(a) Florida Endorsement Form 9; (Restrictions, Easements, Minerals):

1. This endorsement shall not be issued unless there has been a release of the right of entry of the mineral reservation, nor shall it be issued over any adverse matter or defect in title unless such adverse matter or defect has been removed or determined to be legally unenforceable.

2. The language of the Florida Endorsement Form 9 shall conform to the following endorsement language:

"The Company insures the owner of the indebtedness secured by the insured mortgage against loss or damage sustained by reason of:

1. Any incorrectness in the assurance that, at date of policy:

(a) There are no covenants, conditions or restrictions under which the lien of the mortgage referred to in Schedule A can be divested, subordinated or extinguished, or its validity, priority or enforceability impaired.

(b) Unless expressly excepted in Schedule B:

(1) There are no present violations on the land of any enforceable covenants, conditions or restrictions nor do any existing improvements on the land violate building setback lines shown on a plat of subdivision recorded or filed in the public records.

(2) Any instrument referred to in Schedule B as containing covenants, conditions or restrictions on the land does not, in addition, (i) establish an easement on the land; (ii) provide a lien for liquidated damages; (iii) provide for a private charge or assessment; (iv) provide for an option to purchase, a right of first refusal or the prior approval of a future purchaser or occupant.

(3) There is no encroachment of existing improvements located on the land onto adjoining land, nor any encroachment onto the land of existing improvements located on adjoining land.

(4) There is no encroachment of existing improvements located on the land onto that portion of the land subject to any easement excepted in Schedule B.

(5) There are no notices of violation of covenants, conditions, and restrictions relating to environmental protection recorded or filed in the public record.

2. Any future violation on the land of an existing covenant, condition or restriction occurring prior to the acquisition of title to the estate or interest in the land, provided the violation results in:

(a) Impairment or loss of the lien of the insured mortgage; or,

(b) Loss of title to the estate or interest in the land if the insured shall acquire title in satisfaction of the indebtedness secured by the insured mortgage.

3. Damage to existing improvements (excluding lawns, shrubbery or trees).

(a) Which are located on or encroach upon that portion of the land subject to any easement excepted in Schedule B, which damage results from the exercise of the right to maintain the easement for the purpose for which it was granted or reserved.

(b) Which results from the future exercise of any right to use the surface of the land for the extraction or development of minerals excepted from the description of the land or excepted in Schedule B.

4. Any final court order or judgment requiring the removal from any land adjoining the land of any encroachment excepted in Schedule B.

5. Any final court order or judgment denying the right to maintain any existing improvement on the land because of any violation of covenants, conditions or restrictions or building setback lines shown on a plat or subdivision recorded or filed in the public records.

Wherever in this endorsement the words “covenants, conditions or restrictions” appear, they shall not be deemed to refer to or include the terms, covenants, conditions or limitations contained in an instrument creating a lease.

As used in subparagraph 1.(b)(1) and 5., the phrase, “covenants, conditions, or restrictions” shall not be deemed to refer to or include any covenants, conditions or restrictions relating to environmental protection.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.”

(b) Navigational Servitude – The language of the Navigational Servitude Endorsement (Florida) shall conform to the following endorsement language:

1. The Company hereby insures the insured against loss or damage, not exceeding the amount of insurance stated in Schedule A, and costs and attorney’s fees and expenses which the Company may become obligated to pay hereunder, sustained or incurred by the insured by reason of forced removal pursuant to a final judgment of a court of competent jurisdiction in favor of the United States Government requiring the removal of any improvements located on the land at date of policy resulting from the exercise of the rights of the United States Government with respect to control over navigable waters, or lands which formerly constituted navigable waters, for purposes of navigation and commerce.

2. This endorsement is made a part of the policy and is subject to all the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.”

(c) Shared Appreciation – The Shared Appreciation Endorsement (Florida) shall conform to the following endorsement language:

1. The Company hereby insures the Insured against loss or damage by reason of:

a. The invalidity or unenforceability of the lien of the insured mortgage resulting from the provisions therein which provide for a shared appreciation interest.

b. Loss of priority of the lien of the insured mortgage as security for (1) the unpaid principal balance of the loan; (2) the stated interest; and (3) the shared appreciation interest, which loss of priority is caused by the provisions in the insured mortgage for payment or allocation to the insured mortgagee of any shared appreciation interest.

c. "Stated Interest" as used in this endorsement shall mean only the per annum interest on the unpaid principal balance of the loan provided in the insured mortgage at date of Policy.

d. "Shared Appreciation Interest" as used in this endorsement shall mean only those amounts (calculated pursuant to the formula provided in the insured mortgage) payable or allocated to the insured mortgagee, out of the amount, if any, by which the land has appreciated in value as established pursuant to the provisions of the insured mortgage at date of Policy.

e. This endorsement does not insure against loss or damage based upon (a) usury, or (b) any consumer credit protection or truth in lending law, or (c) bankruptcy.

f. This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any endorsements, nor does it increase the face amount thereof."

(d) Additional Interest – The language of the Additional Interest Endorsement (Florida) shall conform to the following endorsement language:

1. The Company hereby insures against loss or damage by reason of:

a. The invalidity or unenforceability of the lien of the insured mortgage resulting from the provisions therein which provide for additional interest subsequent to date of Policy.

b. Loss of priority of the lien of the insured mortgage as security for (1) the unpaid principal balance of the loan; (2) the stated interest; (3) the additional interest, which loss of priority is by the provisions in the insured mortgage for payment or allocation to the insured mortgagee of any additional interest.

2. "Stated Interest" as used in this endorsement shall mean only the fixed percent per annum interest on the unpaid principal balance of the loan provided in the insured mortgage at date of Policy.

3. "Additional Interest" as used in this endorsement, shall mean only those amounts calculated pursuant to the formula provided in the insured mortgage payable or allocated to the insured.

4. This endorsement does not insure against loss or damage based upon (a) usury, or (b) any consumer credit protection or truth in lending law, or (c) bankruptcy.

5. This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof."

(e) Option Endorsement – The language of the Option Endorsement (Florida) shall conform to the following endorsement language:

1. With respect to the option to purchase described in Schedule B, the option to purchase is hereby incorporated into Schedule A of the policy as an interest insured thereby, vested in the insured, and the Company insures against loss or damage sustained or incurred by the insured by reason of:

a. The unenforceability of the right to exercise the option to purchase except to the extent that such unenforceability or claim thereof is based on the failure of the insured to have fulfilled the terms and conditions of the option.

b. The priority over the option to purchase of any conveyance made of the fee simple estate in the land or of any liens or encumbrances created therein after the date of policy, excepting those liens or encumbrances created or consented to by the insured or created by statute in favor of or for the benefit of governmental bodies or public utilities (including without limitation real estate taxes, special assessments, demolition liens, drainage liens and water liens).

2. Nothing contained in this endorsement shall be construed as insuring the insured against loss or damage sustained or incurred by reason of:

a. Disaffirmance of the option under the provisions of the bankruptcy code or state insolvency law.

b. The effect of any condemnation proceeding including the failure of the optionee to receive all or part of an award entered in a condemnation proceeding unless failure to share in said award stems solely from a court order or judgment which constitutes a final determination and adjudges the option to be invalid.

c. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law.

3. Other than expenses necessary for a judicial determination or defense of the validity and priority of the option as described in subsections (1) and (2) above, loss under this endorsement does not include:

a. Expenses required to enforce the option and to obtain a transfer of title from the party or entity in whom title to any interest in the land is vested at the time of exercising the option, or

b. Expenses required to obtain valid conveyances or releases of any rights, interests or liens related to the land which appear of record or are known to the insured at the time of exercising the option.

4. The measure of the loss or damage sustained by the insured under this policy shall be:

a. The excess of the fair market value of the property at the time the insured attempts to exercise the option (or when a law suit contesting the validity of the option is filed, if filed prior to the attempted exercise of the option) above the price at which the insured could acquire the property by exercise of the option, and

b. The unreimbursed portion of the consideration given by the insured to obtain the option.

5. This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof."

(f) Change of Partners – The Change of Partners (Fairways) Endorsement (Florida) shall conform to the following endorsement language:

"1. The Company agrees that in the event of an occurrence of loss insured against by this policy, the Company will not deny liability hereunder on the ground that a dissolution of the partnership has occurred or a new partnership has been formed by reason of one or more of the general partners transferring their interest to another person or entity; by reason of a withdrawal of one or more of the general partners from the partnership; or by reason of the addition of one or more persons or entities as partners.

2. Nothing contained herein shall be construed as extending the insurance hereunder as to matters attaching or created subsequent to the date hereof; or insuring the status of the insured after the transfer of the partnership interest, the withdrawal of partners, or the addition of new partners.

3. This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof."

(g) Contiguity Endorsement – The Contiguity Endorsement (Florida) shall conform to the following endorsement language:

"1. The Company insures the Insured herein against loss or damage by virtue of any inaccuracy in the following statement, to wit: Parcel ___ of the legal description and Parcel ___ of the legal description are contiguous to each other along the ___ line of Parcel ___ and ___ line of Parcel ___, and, taken as a tract, constitute one Parcel of land.

2. This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof."

(h) Survey Endorsement – The language of the Survey Endorsement (Florida) shall conform to the following endorsement language:

"The Company hereby acknowledges the lands described in Schedule A are the same lands described in the survey prepared by _____ dated _____; however, the Company does not insure the accuracy or completeness of said survey."

(i) Construction Loan Up-date – The language of the Construction Loan Up-date Endorsement shall conform to the following endorsement language:

1. The liability of the Company is increased by $_____ to include disbursements made pursuant to requisition(s) _____ for a cumulative total to date of $_____.

2. The Company insures there have been no instruments filed among the Public Records of ___ County, affecting title to the

lands described in Schedule A from _____ through _____, other than the following:

3. The Company insures each of the foregoing is subordinate to the lien of the mortgage insured except:

4. This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof."

(j) Foreign Currency Endorsement – The language of the Foreign Currency Endorsement shall conform to the following endorsement language:

1. The Company hereby insures against loss or damage by reason of:

a. The invalidity or unenforceability of the lien of the insured mortgage resulting from the provisions therein which provide for revaluation of the indebtedness secured thereby based upon changes in the conversion rate between U.S. dollars and the stated foreign currency.

b. Loss of priority of the lien of the insured mortgage as security for the unpaid principal balance of the loan, which loss of priority is caused by such changes in the conversion rate.

2. The Company acknowledges that changes from time to time in the conversion rate between U.S. dollars and the stated foreign currency may decrease or increase the dollar amount of the indebtedness secured by the insured mortgage. The Company hereby agrees that, so long as any portion of the indebtedness secured by the insured mortgage shall remain outstanding, any such increase in the dollar amount of indebtedness shall not be deemed by the Company to constitute additional principal indebtedness created subsequent to date of policy within the meaning of paragraph 8 of the Conditions and Stipulations of the policy; provided, however, that the total liability of the Company under the policy at any time shall not exceed, in the aggregate, the face amount of the policy and the costs which the Company is obligated to pay under the terms and provisions of the policy.

3. "Changes in the conversion rate" as used in this endorsement, shall mean only those changes in the conversion rate calculated pursuant to the formula provided in the insured mortgage at date of policy.

4. This endorsement does not insure against loss or damage based upon (a) the failure to pay any mortgage recording tax or similar charge applicable to the mortgage described in Schedule A at date of policy or as a result of increases in the amount of indebtedness resulting from changes in the conversion rate of U.S. dollars and the stated foreign currency, (b) usury, (c) any consumer credit protection or truth-in-lending law, (d) bankruptcy, or (e) any invalidity or unenforceability or loss of priority of the mortgage as to any indebtedness in amounts in U.S. dollars in excess of the amount stated in the policy.

5. This endorsement is made a part of the policy and is subject to all of the terms and conditions thereof and of any prior endorsements thereto, except that the insurance afforded by this endorsement is not subject to paragraph (3)(d) of the Exclusions from Coverage. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it increase the face amount thereof."

(k) Assignment of Mortgage – The language of the Assignment of Mortgage Endorsement shall conform to the following endorsement language:

"Endorsement number _____

Name of original insured:

Original effective date:

Original amount of insurance $_____

Agent's file reference: _____

The Company insures that the mortgage described in the above numbered and dated policy has been duly assigned to:

_____

Assignee

_____

Address

by an assignment dated the _____ day of _____, 19___, and recorded the _____ day of _____, 19___, in Official Records _____, Page ____, under Clerk's File Number _____, of the Public Records of ___ County, Florida.

This endorsement is to be attached to and form a part of the above numbered and dated policy issued by _____"

(l) Balloon Mortgage Endorsement – The language of the Balloon Mortgage Endorsement shall conform to the following endorsement language:

1. The Company insures the insured mortgagee against loss or damage by reason of:

a. The invalidity or unenforceability of the lien of the insured mortgage resulting from the provisions therein which provide for a conditional right to refinance and a change in the rate of interest as set forth in the Mortgage Rider.

b. Loss of priority of the lien of the insured mortgage as security for the unpaid principal balance of the loan, together with interest thereon, which loss of priority is caused by the exercise of the conditional right to refinance and the extension of the loan term to the new maturity date set forth on the rider and a change in the rate of interest, provided that all the conditions set forth in paragraphs 2 and 5 of the Balloon Mortgage Rider have been met, and there are no other liens, defects, encumbrances, or other adverse matters affecting title recorded subsequent to the date of policy.

2. This endorsement does not insure against loss or damage based upon, (a) Usury or (b) any consumer credit protection or truth-in-lending law or (c) bankruptcy.

3. This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof."

(9) Recognizing that the endorsements listed in subsection 8 of this section and the affirmative language in a title policy imposes certain obligations and liabilities on a title insurer and agent and the issuance of endorsements and/or affirmative language in a title policy creates an additional risk and a considerable amount of work in addition to the initial search and examination of title required to write a basic policy, a minimum premium shall be charged and collected by an insurer or agent where coverage in the form of affirmative language and/or endorsements to a policy are required. Therefore, the risk rate premium for each of the endorsements listed in paragraph 8 of this section are as follows:

1-4 Family Unit Residential Risks	$25 minimum per endorsement
	$100 maximum per endorsement
Other Risks (commercial or greater than 1-4 family residential risk.)	$100 Minimum per endorsement

except that the risk rate premium for the following approved endorsements shall be at minimum the percentage of the total policy premium as indicated; however, on a simultaneously issued mortgage policy, the endorsement charge shall be based on the underlying owner, and loan policy premium:

(a) Florida Endorsement Form 9-10%.

(b) Navigational Servitude – 10%.

(10) Additional risk premium must be charged if additional insurance is purchased.

(11) All loan policies and endorsements are subject to the 125% rule as set forth in paragraph 69O-186.003(4)(b), F.A.C., except that a policy with a Shared Appreciation, or Additional Interest Endorsements may be issued for an amount up to 150% in excess of the principal debt.

(12) The applicable rate to be charged and collected for a loan policy after a mortgage balloons and is subsequently refinanced by the same lender, and borrower on the same land shall be the rates as described in paragraph (5) of Rule 69O-186.003, F.A.C., substitution loan rates.

(13) The Substitution Loan Rate provided in subsection 69O-186.003(5), F.A.C., shall apply to any endorsement which insures a modification of a mortgage which was insured by an outstanding policy where the modification agreement effects any change in the terms, conditions, priority, or security, other than:

(a) An extension of the time for payment of the secured obligation;

(b) Any decrease in the interest rate of the insured mortgage, provided the "cap" on a variable rate mortgage is not greater than the original "cap" and/or the "cap" is not greater than the original fixed rate;

(c) Any increase in the interest rate of the insured mortgage, provided the endorsement contains an exception for the loss of priority occasioned by the increase;

(d) Changes in an amortization schedule to extend the term of the insured mortgage;

(e) A release of a portion of the secured property;

(f) A correction to either perfect the lien of the insured mortgage or comply with the terms of the lender's original commitment;

(g) Future advances made pursuant to Section 697.04, F.S.; or

(h) Encumbrances of additional parcels under a revolving construction loan agreement contained in the original mortgage and

contemplated by subsection 69O-186.003(10), F.A.C.

(14) The retention rate for an insurer shall be the same as set forth in subsection 69O-186.003(11), F.A.C.

(15)(a) The following are prohibited endorsements and affirmative coverages that shall not be issued in this state:

1. Doing Business Endorsement.
2. Non Imputation Endorsement (Imputation of knowledge).
3. Access.
4. Location.
5. Expanded Insured Endorsement.
6. Street Assessment Endorsement.
7. Zoning Endorsement.
8. Usury.

(b) The extension of special affirmative coverage by indirect means is prohibited.

(16) The following endorsements can be issued or affirmative language is permitted with no specific approval required from the Office:

(a) Endorsements correcting mistakes.

(b) Future Insurance (continuing liability under existing policies).

(c) Endorsements deleting exceptions which no longer affect title to the land.

(d) Endorsements insuring future advances.

(e) Changes in effective dates (loan policies only).

(f) Gap coverage endorsement.

(g) Insurance against the attempted enforcement of known claims for ascertainable sums of money in reliance on security commensurate with such risk.

(h) Deletion of General Exceptions.

(i) Endorsements modifying the standard owner's and mortgagee policy to convert to a leasehold policy previously approved by the Office.

(j) Tie-in Spreader (Intra Florida properties only).

Rulemaking Authority 624.308, 627.777, 627.782 FS. Law Implemented 624.307(1), 627.777, 627.782, 697.04(1) FS. History–New 9-17-71, Repromulgated 12-24-74, Formerly 4-21.05, Amended 6-25-86, 2-26-90, 2-27-91, Formerly 4-21.005, Amended 2-13-95, Formerly 4-186.005, Amended 11-3-05.

69O-186.007 Title Insurance Limited to Coverage of Real Property.

Section 624.608, F.S., which declares that "Title insurance is insurance of owners of real property or others having an interest in real property or contractual interest derived therefrom, or liens or encumbrances on real property, against loss by encumbrance, or defective titles, or invalidity, or adverse claim to title" shall be construed to confine the scope of coverage of title insurance to real property and contractual interests derived therefrom.

Rulemaking Authority 624.308 FS. Law Implemented 624.307(1), 624.608 FS. History–New 4-18-73, Formerly 4-21.09, Amended 6-25-86, Formerly 4-21.009, 4-186.007.

69O-186.008 Escrow Requirements.

(1) A title insurance agent or title insurer may not use, endanger, or encumber money held in trust without the permission of the owner of such money, given after full disclosure of the circumstances. Accordingly, except as hereinafter provided, a title insurance agent or title insurer may not disburse funds unless the funds are collected funds. For purposes of this provision, "collected funds" means funds deposited, finally settled and credited to the title insurance agent's or title insurer's trust account. Notwithstanding that a deposit made by a title insurance agent or title insurer to the trust account has not been finally settled and credited to the account, the title insurance agent or title insurer may disburse funds from the trust account in reliance on such deposits under any of the following circumstances:

(a) The deposit is made by a certified check, cashier's check, or money order;

(b) The deposit is made by a check representing loan proceeds issued by a federally- or state-chartered bank, savings bank, savings and loan association, credit union, mortgage broker licensed under Chapter 494, F.S., or other duly licensed or chartered

lender;

(c) The deposit is made by a bank check, cashier's check, official check, treasurer's check, or other such official instrument issued by a bank, savings and loan association, or credit union when the instrument is drawn by the bank on itself, or on another bank whether or not the check is "payable through" or "payable at" a bank and the title insurance agent or title insurer has reasonable and prudent grounds to believe the instrument will clear and constitute collected funds in the title insurance agent's or title insurer's trust account within a reasonable period of time. Such instruments are considered by the Federal Reserve Board, under Federal Regulation CC, otherwise cited as 12 C.F.R. 229, to be "next day" payable items. A check drawn by a corporation on a bank or a draft drawn by a corporation on itself whether or not the check or draft is "payable at" or "payable through" a bank and is not a "next day" payable item under Regulation CC unless the depository bank chooses to treat it as such, and may not be disbursed on until collected;

(d) The deposit is made by a check drawn on the trust account of a lawyer licensed to practice in the State of Florida or on the escrow or trust account of a real estate broker licensed under Chapter 475, F.S., or on the account of a mortgage broker licensed under Chapter 494, F.S., or on the escrow trust account of a title insurance agent or title insurer licensed under the Florida Insurance Code, when the title insurance agent or title insurer has a reasonable or prudent belief that the deposit will clear and constitute collected funds in the trust account within a reasonable period of time;

(e) The deposit is made by a check issued by the United States Government, the State of Florida or any agency or political subdivision of the State of Florida;

(f) The deposit is made by a check issued by an insurance company authorized to do business in the State of Florida and the title insurance agent or title insurer has a reasonable and prudent belief that the instrument will clear and constitute collected funds in the trust account within a reasonable period of time;

(g) The deposit is made by a personal check in an amount not to exceed $500 when the title insurance agent or title insurer has a reasonable and prudent belief that the instrument will clear and constitute collected funds in the trust account within a reasonable period of time.

(2) For purposes of this provision, disbursement of funds shall only be made on such negotiable instruments as enumerated above which contain the following elements:

(a) Are signed by the drawer; and

(b) Contain an unconditional order to pay; and

(c) Are payable on demand; and

(d) Are payable to order or to bearer.

(3) Funds received by a licensed title insurance agent or insurer pursuant to a real estate closing transaction involving the issuance of a title insurance binder, commitment, policy of title insurance, or guaranty of title shall not be deposited or transferred to an interest-bearing trust account without the written consent of the buyer and seller.

(4) Funds received from depositors in excess of the insured amount must be deposited in a financial institution that has a rating not less than the minimum standards established by Government National Mortgage Association (GNMA).

Rulemaking Authority 624.308 FS. Law Implemented 624.307(1), 626.8473, 628.151 FS. History–New 6-25-86, Amended 2-26-90, Formerly 4-21.010, Amended 2-13-95, 1-27-02, Formerly 4-186.008.

69O-186.009 Reconciliation of Escrow Accounts.

(1) Every licensed title insurance agent shall maintain a monthly reconciliation of every escrow account required to be maintained pursuant to Section 626.8473, F.S., and shall, on a monthly basis, report such reconciliation together with appropriate supporting documentation to each title insurer which licensed the agent during the reconciliation period. The reconciliation shall be supported by appropriate documentation, including a monthly bank statement, a list of all outstanding checks as of the date of the reconciliation which are not shown on the monthly bank statement, and a trial balance of the escrow ledger records required to be maintained by subsection (2). Licensed title insurance agents and title insurers shall provide a copy of the monthly escrow account reconciliation to the Office upon its request. Such records shall be maintained by the title insurer for a period of five years.

(2) Every licensed title insurance agent shall maintain a separate ledger card for each real estate closing transaction for which funds are received in escrow. The ledger card shall contain chronological entries of dates and amounts of moneys received and disbursed including the name of the remitter and payee and each check number issued on such escrow account. Such records shall be maintained by the title insurance agent for a period of three years. The ledger card required by this rule may be maintained in

computer storage with a print-out available upon request of a title insurer or the Office.

Rulemaking Authority 624.308 FS. Law Implemented 624.307(1), 626.8473, 627.776(1)(m), 628.151 FS. History–New 2-26-90, Formerly 4-21.0105, 4-186.009.

69O-186.010 Insurer's Assumption of Certain Liabilities.

Rulemaking Authority 624.308 FS. Law Implemented 624.307(1), 627.786 FS. History–New 6-25-86, Amended 2-27-91, Formerly 4-21.011, 4-186.010, Repealed 10-25-16.

69O-186.013 Title Insurance Statistical Gathering: Licensed Title Insurance Agencies and Florida Retail Offices of Direct-Writing Title Insurance Underwriters.

(1) By the day designated in Section 627.782(8), F.S. of 2015 and the same day of each year after 2015, licensed title insurance agencies and Florida retail offices of direct-writing title insurance underwriters must electronically submit statistical data to the Office. The submittal shall be accomplished by electronically completing OIR form OIR-EO-2087 "Title Insurance Experience Reporting – Agents and Retail Offices of Direct-Writing Title Insurance Underwriters", http://www.flrules.org/Gateway/reference.asp?No=Ref-03461 as adopted and incorporated by this reference. The aforementioned form may be obtained from the Office's web site located at http://www.floir.com/iportal.

(2) OIR form OIR-EO-2087 (New 01/14) "Title Insurance Experience Reporting – Agents and Retail Offices of Direct-Writing Title Insurance Underwriters" shall be completed by title insurance agencies and retail offices of direct-writing title insurance underwriters in accordance with the instructions for each submittal year. The initial submittal shall reflect data for the prior five years ending December 31, 2014. For each year after 2014, the submittal shall, in addition to the data for the current year, include a certificate re-certifying the accuracy and completeness of the prior four years' data. If significant changes have been discovered in the data submitted in any of the four prior years, a corrected submittal shall be made for that year. Pursuant to Section 627.782, F.S., the statistical data is collected for the purposes of analyzing premium rates, retention rates, and the condition of the title insurance industry.

(3) All submittals shall be submitted to the Office at http://www.floir.com/iportal, the industry portal to the Office's I-File System, as a data filing. A filing shall be considered received by the Office when its arrival in the Office is shown electronically to be on business days between the hours of 8:00 a.m. and 5:00 p.m. eastern standard time. Filings received after 5:00 p.m. shall be considered to be received the next business day.

Rulemaking Authority 624.308 FS. Law Implemented 624.307(1), 627.782 FS. History–New 2-13-95, Formerly 4-186.013, Amended 6-13-14.

69O-186.014 Title Insurance Statistical Gathering-Title Insurance Underwriters.

(1) By the day designated in Section 627.782(8), F.S. of 2015 and the same day of each year after 2015, title insurance underwriters must electronically submit statistical data to the Office. The submittal shall be accomplished by electronically completing OIR form, OIR-DO-2115 (New 01/14), "Title Insurance Experience Reporting – Title Insurance Underwriters", http://www.flrules.org/Gateway/reference.asp?No=Ref-03462, as adopted and incorporated by this reference, which may be obtained from the Office's web site located at http://www.floir.com/iportal.

(2) OIR form OIR-DO-2115 (New 01/14), "Title Insurance Experience Reporting – Title Insurance Underwriters", shall be completed by title insurance underwriters in accordance with the instructions for each submittal year. The initial submittal shall reflect data for the prior five years ending December 31, 2014. For each year after 2014, the submittal shall, in addition to the data for the current year, include an affidavit re-certifying the accuracy and completeness of the prior four years' data. If significant changes have been discovered in the data submitted in any of the four prior years, a corrected submittal shall be made for that year. OIR form OIR-DO-2115 (New 01/14) shall be complete by utilizing the following document, which is hereby adopted and incorporated by reference:

ALTA Uniform Financial Reporting Plan of March, 1978, which may be obtained from the Office's web site located at http://www.floir.com/iportal.

Pursuant to Section 627.782, F.S., the statistical data is collected for the purposes of analyzing premium rates, retention rates, and the condition of the title insurance industry.

(3) All submittals shall be submitted to the Office at http://www.floir.com/iportal, the industry portal to the Office's I-File System, as a data filing. A filing shall be considered received by the Office when its arrival in the Office is shown electronically to

be on business days between the hours of 8:00 a.m. and 5:00 p.m. eastern standard time. Filings received after 5:00 p.m. shall be considered to be received the next business day.

Rulemaking Authority 624.308 FS. Law Implemented 624.307(1), 624.424, 627.782 FS. History–New 1-19-14.

69O-186.015 Title Insurance Agency Collateral Substitution.

When a title insurance agency substitutes a surety bond in place of its deposit of securities pursuant to Section 626.8418(2), F.S., the bond must secure performance by the agency of its responsibilities relating to the title policies issued through the agency, including performance during the time period in which the deposit was in place, prior to the issuance of the bond. All claims made after issuance of the bond based on liability incurred prior to the issuance of the bond, must be covered by the bond.

Rulemaking Authority 624.308 FS. Law Implemented 624.307(1), 626.8418 FS. History–New 4-29-96, Formerly 4-186.015.

69O-186.017 Certificate of Mortgage Release.

Rulemaking Authority 701.041(9) FS. Law Implemented 701.041(9) FS. History–New 3-22-07, Repealed 3-16-08.

Florida Division of Insurance Agent and Agency Services
Frequently Asked Questions

Title Agency – General Issues

Are there any fees I must pay each year for my title agency?
Each licensed title insurance agency must pay $200 as an administrative surcharge by the end of January in the current year. Failure to pay this amount can result in administrative action and/or a fine being assessed against the license of the title agency.

Title Insurance Agency Names
A title agency "…shall not adopt a name which contains the words "title insurance," "title guaranty," or "title guarantee," unless such words are followed by the word "agent" or "agency" in the same size and type as the words preceding them…" Please see section 626.8413, F.S.

Settlement Statement Charges

Who can act as an Escrow agent in Florida?
Only a Licensed Title Agent; Attorney; Financial Institution; or Licensed Real Estate Agent.

Can I deposit escrow funds into an interest bearing account?
You may if the buyer and the seller have given you permission in writing to do so prior to depositing the funds. However, the escrow funds are considered fiduciary funds the agency is holding for benefit of another. Any interest earned on these funds should be addressed in this permission and it should note that the agency may not accept the interest unless both parties have voluntarily released their right to that interest. [NOTE: Only applicable to title agency; trust account funds go into an IOTA]

Can a title agency accept escrow funds for a transaction that does not include the issuance of title insurance?
The Florida Statutes do not prohibit the acceptance of escrow funds outside a title insurance transaction and Florida Statutes §877.101 specifically identifies licensed title insurance agencies as an entity that may accept escrow funds.

PLEASE NOTE: Accepting escrow funds for a transaction outside one that results in the issuance of a title insurance policy may not be covered under your agency's surety and fidelity bonds. You should also check your agency's errors and omission coverage, too.

If there is less than $10 in the escrow account, can a check be written to the agency to bring the balance to "0"?
No. Escrow funds are received by an agency in a fiduciary capacity. All funds must be properly accounted and paid to appropriate party. Failing to disburse any amount from the escrow fund is a violation of Florida Statutes §626.8473.

Is it okay to enter into an agreement where my agency keeps any amount due to the consumer that is less than $25?

The Florida Statutes defines all funds received by a title insurance agent or agency received from others as escrow funds to be trust funds held in a fiduciary capacity. The title insurance agent or agency is not the owner of these funds. A title insurance agent, title insurance agency or a title insurer is entitled to receive only the amounts listed on the settlement statement form for the services or products that entity provided. Anyone that retains any portion of a fee that the consumer overpaid must refund that overage immediately. The Department of Financial Services does not recognize any waiver of the provisions of the Florida Statutes that relate to funds held in escrow and/or disbursed from escrow by a licensee.

A title insurance agent or agency must immediately return any amounts that are due to the consumer, regardless of the amount.

Florida Statutes §626.8473(7):
A title insurance agent, or any officer, director, or employee thereof, or any person associated therewith as an independent contractor for bookkeeping or similar purposes, who converts or misappropriates funds received or held in escrow or in trust by such title insurance agent, or any person who knowingly receives or conspires to receive such funds, commits:

- If the funds converted or misappropriated are $300 or less, a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.
- If the funds converted or misappropriated are more than $300, but less than $20,000, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
- If the funds converted or misappropriated are $20,000 or more, but less than $100,000, a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
- If the funds converted or misappropriated are $100,000 or more, a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Real Estate Commission Disbursements
The Florida Real Estate Commission (FREC) issued a declaratory statement concerning this issue. The statement concludes that the title agency may disburse the commissions directly to the real estate agent if certain conditions are met:

- The real estate broker has provided written authorization to the title agency to disburse the commissions directly to their real estate agents.
- The authorization is to identify the specific transaction, identify the specific real estate agents, and disclose the exact amount of commissions each real estate agent is to receive.
- The written authorization must be signed by the office manager of the real estate brokerage firm.
- The disbursement will occur only after the transaction has closed.

The last requirement is a little tricky in that the case also explains that the funds would not be available to be disbursed if the transaction did not close. This is because the loan proceeds are technically not received by the title agency until the transaction closes, so any disbursement

made that fits the description above would be automatically considered to have been made after the transaction closed.

The key component of lawful disbursement by the title agency is written authorization from the real estate broker to disburse the commissions to the named real estate agents in the amounts authorized by the real estate broker.

What fees may I charge on the settlement statement form?
The only amounts that may be charged by a title agency for issuing the title Insurance and completing the closing are:

- Closing Services - "Closing services" 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.
- Title Search - "Title search" means the compiling of title information from official or public records.
- Premium - "Premium" means the charge, as specified by rule of the commission that is made by a title insurer for a title insurance policy including the charge for performance of primary title services by a title insurer or title insurance agent or agency.

No other charges are authorized by the Florida Statutes to be charged by a title insurance agent or agency for these services.

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.

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.

Can I charge for the examination of the title records?

The examination or evaluation of records to determine the insurability of a property is considered part of the primary title services, which are a component of the premium and a separate fee is not charged to the consumer.

How do I properly record a rebate my agency is giving?

To assure proper credit to the appropriate party, any rebate of the agent's share of the premium should be noted on the Closing Disclosure form on any line not assigned to another topic. It is important to note Florida Statutes s. 627.780 requires licensees to "quote, charge, accept, collect or receive" only the promulgated rate (premium), which should be recorded on the

Closing Disclosure form in the proper area as defined by the Consumer Financial Protection Bureau (CFPB).

Marketing, Referrals & Unlawful Inducements

Can I pay real estate agents, brokers or others for each piece of business they send to me?
No. The Florida Statutes prohibit title insurance agents and agencies from paying, allowing, giving, or offering to pay, allow or give a direct or indirect inducement for the purchase of title insurance. Paying someone for each piece of business they send to you would be considered an inducement, which would be a violation of the statutes. [Florida Statutes §626.9541(1)(h)3.a. and Rule 69B-186.010, F.A.C.]

Referral fees
The Florida Statutes prohibit title insurance agents and agencies from paying, allowing, giving, or offering to pay, allow or give a direct or indirect inducement for the purchase of title insurance. Paying someone for each piece of business they send to you could be considered an inducement, which would be a violation of the statutes. See subsection 626.9541(1)(h)3.a., F.S. This section does include paying employees of the title agency who are not licensed and appointed as title insurance agents. An example would be a title insurance agency that pays a marketing representative who is not licensed for each title insurance policy sold.

My title agent was supposed to provide me a gift card for referring business to them.
Rule 69B-186-010(4), Florida Administrative Code, provides a complete list of unfair and/or deceptive acts as they pertain to title insurance agents and agencies. Here are a few items listed in the Florida Administrative Codes which title agents cannot do:

- Provide or pay for food, drinks or room rentals at events designed to promote their business.
- Pay advertising costs of real estate brokers, etc. for business referrals.
- Sponsor and host any open houses for real estate brokers etc. for business referrals.
- Provide or pay for gift cards or gift certificates for referral of business.
- Provide or pay for cellular contracts for business referrals.
- Offer any discount or reduction of any fee of the cost of an inspection, inspection report, appraisal or survey, including wind inspections, to a purchaser or prospective purchaser of title insurance.

Rebates And Unlawful Inducements:
Title agents and agencies are permitted to rebate all or part of their share of the title insurance premium as the result of a Florida Supreme Court decision in the case of Chicago Title Insurance Company v. Butler, No. 95312 (Fla. Oct. 19, 2000). This decision allows a title insurance agent or agency to rebate any portion of the agent's share of the premium to the person responsible for paying that premium. However, a rebate may not be provided to any third party as an inducement for the referral of business to the title insurance agent or agency.

The Department believes that it is a violation of subparagraph 626.9541(1)(h)3., Florida Statutes, and subsection 69B-186.010(4)(a), Florida Administrative Code, for a title insurance agent and/or agency to pay for an estoppel certificate without being reimbursed for the expenditure. However, if a title insurance agent and/or agency pay for an estoppel certificate,

and the title insurance agent or agency is reimbursed at closing for the estoppel certificate, such advance payment for the estoppel certificate does not constitute an "unlawful rebate." If the closing falls through then the title agent/agency should make efforts to request and obtain reimbursement.

Can a title agency advertise?
Yes. The ad must be honest and accurate. It should promote the title agency and not any other business. If the title agency places an ad that solicits customers for any other business, it may be viewed as an unfair trade practice and an inducement for the future purchase of insurance.

Can I or my agency advertise they offer rebates?
Yes. The advertisement must be truthful and not be misleading. The advertisement cannot say the agency is discounting the title insurance premium, as that is misleading and inaccurate. The agency must charge the promulgated rate for title insurance and then the agency may rebate any portion of their share of the premium. Some examples: Advertising that your agency charges the lowest rates is misleading in that everyone must charge the same rates in Florida. Stating your agency reduces the title insurance premium by 20% is deceptive. You must charge the same rate, but you could provide a rebate of your portion of the premium that equates to 20% of the full premium. The rebate must be given to the person/entity who pays the premium.

Is it acceptable for a vendor that a title agency does business with (i.e. an appraiser, termite company, home inspection company, etc.) to provide coupons for a discount to the title agencies customers?
It is acceptable for the vendor to do so.

Can a title agency print bulletins for a real estate agent if it charges actual cost?
Yes and you can make a profit you wish.

Can a title agency email its contacts Realtor flyers for listings and open houses which do not contain the title agency's name?
No because you're providing the Realtor free leads and doing the work for the Realtor for free.

Can a title agency have a raffle at an event to promote its own business?
Yes.

Can a title agency donate a gift card to be raffled off at an event given by a realtor?
Yes if it is to promote the business of the title agent/agency and not the realtor.

Can a title agency attend an open house and provide refreshments, and if so, is there a dollar limit on the refreshments?
Yes, if it is to promote the business of the title agent/agency. No, if it is to promote the business of the realtor or their open house.

There is no dollar limit on food. However, if you wish to share in the costs of the food and drink for an open house with a realtor, you must pay a proportional share of those costs. You cannot provide food and drinks for the realtor's open house at no cost to them.

Can a title agency contribute towards the cost of publicizing an open house?
Yes if it is to promote the business of the title agent/agency, not the realtor, and is proportionately split among the parties hosting or putting on the open house.

Would it be a violation for a title agency that is attorney owned to sponsor and cater realtor open houses?
Yes.

Is there a limit on how many $25 promotional items that a title agency can give to any particular referrer of settlement business?
No.

Can my title agency invite real estate professionals to our office to hear an educational presentation by an expert in some field related to real estate closings, such as a CPA with expertise in FIRPTA (Foreign Investment in Real Property Tax Act) or a surveyor?
Yes.

During the presentation, can we serve lunch or other refreshments?
Yes because this is part of the event you are putting on to educate and promote yourself.

Is paying the speaker allowable?
Yes because you are paying the expert for their time. However, you cannot over pay a speaker as a way to reward them for sending business to you.

Our title agency would like to have a monthly networking, relationship-building event with local real estate agents, such as a wine tasting, a cooking class etc. Some invitees already give us business, some would be real estate agents we would like to get business from. Is this permissible as long as our per person cost does not exceed the $25 limit?
Yes but the $25 limit does not apply here because the limit only applies to items of articles of merchandise for the purposes of advertising, which these are not.

What if our per person cost is say $35, and the real estate agent pays $10 per person; would that be okay?
If you want to have them pay some of the costs of these events, that would be okay.

Can our title agency participate in a program like "Homes for Heroes"?
…The Florida Insurance Code does not regulate the amount a title agency can charge for closing services; however, the fee charged must at minimum include the actual costs, fees or charges the agency must pay related to the closing.

PART XIII
TITLE INSURANCE CONTRACTS

627.7711 Definitions.
627.776 Applicability or inapplicability of Florida Insurance Code provisions to title insurers.
627.777 Approval of forms.
627.7773 Accounting and auditing of forms by title insurers.
627.7776 Furnishing of supplies; civil liability.
627.778 Limit of risk.
627.780 Illegal dealings in premium.
627.782 Adoption of rates.
627.783 Rate deviation.
627.7831 Commitments; charges; collection.
627.784 Casualty title insurance prohibited.
627.7841 Insurance against adverse matters or defects in the title.
627.7842 Policy exceptions.
627.7843 Property information reports.
627.7845 Determination of insurability required; preservation of evidence of title search and examination.
627.785 Preemption by state.
627.786 Transaction of title insurance and any other kind of insurance prohibited.
627.7865 Title insurer assessments.
627.791 Penalties against title insurers for violations by persons or entities not licensed.
627.792 Liability of title insurers for defalcation by title insurance agents or agencies.
627.796 Errors and omissions policy requirements.
627.797 Exempt agent list.
627.798 Rulemaking authority.

627.7711 Definitions.—As used in this part, the term:
(1)(a) "Closing services" 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.
(b) "Primary title services" means determining insurability in accordance with sound underwriting practices based upon evaluation of a reasonable title search or a search of the records of a Uniform Commercial Code filing office and such other information as may be necessary, determination and clearance of underwriting objections and requirements to eliminate risk, preparation and issuance of a title insurance commitment setting forth the requirements to insure, and preparation and issuance of the policy. Such services do not include closing services or title searches, for which a separate charge or separate charges may be made.

(2) “Premium” means the charge, as specified by rule of the commission, which is made by a title insurer for a title insurance policy, including the charge for performance of primary title services by a title insurer or title insurance agent or agency, and incurring the risks incident to such policy, under the several classifications of title insurance contracts and forms. As used in this part or in any other law, with respect to title insurance, the word “premium” does not include a commission.
(3) “Title insurer” means any domestic company organized and authorized to do business under the provisions of chapter 624, for the purpose of issuing title insurance, or any insurer organized under the laws of another state, the District of Columbia, or a foreign country and holding a certificate of authority to transact business in this state, for the purpose of issuing title insurance.
(4) “Title search” means the compiling of title information from official or public records.
History.—ss. 575, 809(2nd), ch. 82-243; s. 79, ch. 82-386; ss. 88, 114, ch. 92-318; s. 6, ch. 99-286; s. 1200, ch. 2003-261; s. 2, ch. 2005-153; s. 3, ch. 2007-44; s. 20, ch. 2014-38; s. 6, ch. 2014-132.

627.7845 Determination of insurability required; preservation of evidence of title search and examination.—
(1) A title insurer may not issue a title insurance commitment, endorsement, or title insurance policy until the title insurer has caused to be made a determination of insurability based upon the evaluation of a reasonable title search or a search of the records of a Uniform Commercial Code filing office, as applicable, has examined such other information as may be necessary, and has caused to be made a determination of insurability of title or the existence, attachments, perfection, and priority of a Uniform Commercial Code security interest, including endorsement coverages, in accordance with sound underwriting practices.
(2) The title insurer shall cause the evidence of the determination of insurability and the reasonable title search or search of the records of a Uniform Commercial Code filing office to be preserved and retained in its files or in the files of its title insurance agent or agency for at least 7 years after the title insurance commitment or title insurance policy was issued. The title insurer or its agent or agency must produce the evidence required to be maintained under this subsection at its offices upon the demand of the office. Instead of retaining the original evidence, the title insurer or its agent or agency may, in the regular course of business, establish a system under which all or part of the evidence is recorded, copied, or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic, or other process that accurately reproduces or forms a durable medium for reproducing the original.
(3) The title insurer or its agent or agency must maintain a record of the actual premium charged for issuance of the policy and any endorsements in its files for a period of not less than 7 years. The title insurer, agent, or agency must produce the record at its office upon demand of the office.
(4) This section does not apply to an insurer assuming no primary liability in a contract of reinsurance or to an insurer acting as a coinsurer if any other coinsuring insurer has complied with this section.
History.—ss. 582, 809(2nd), ch. 82-243; s. 79, ch. 82-386; s. 4, ch. 85-185; ss. 102, 114, ch. 92-318; s. 18, ch. 99-286; s. 1207, ch. 2003-261; s. 3, ch. 2005-153; s. 7, ch. 2007-44; s. 13, ch. 2014-112.

Rules Regulating The Florida Bar

RULE 4-5.7 RESPONSIBILITIES REGARDING NONLEGAL SERVICES

(a) Services Not Distinct From Legal Services. A lawyer who provides nonlegal services to a recipient that are not distinct from legal services provided to that recipient is subject to the Rules Regulating The Florida Bar with respect to the provision of both legal and nonlegal services.

(b) Services Distinct From Legal Services. A lawyer who provides nonlegal services to a recipient that are distinct from any legal services provided to the recipient is subject to the Rules Regulating The Florida Bar with respect to the nonlegal services if the lawyer knows or reasonably should know that the recipient might believe that the recipient is receiving the protection of a client-lawyer relationship.

(c) Services by Nonlegal Entity. A lawyer who is an owner, controlling party, employee, agent, or otherwise is affiliated with an entity providing nonlegal services to a recipient is subject to the Rules Regulating The Florida Bar with respect to the nonlegal services if the lawyer knows or reasonably should know that the recipient might believe that the recipient is receiving the protection of a client-lawyer relationship.

(d) Effect of Disclosure of Nature of Service. Subdivision (b) or (c) does not apply if the lawyer makes reasonable efforts to avoid any misunderstanding by the recipient receiving nonlegal services. Those efforts must include advising the recipient, preferably in writing, that the services are not legal services and that the protection of a client-lawyer relationship does not exist with respect to the provision of nonlegal services to the recipient.

Comment

For many years, lawyers have provided to their clients nonlegal services that are ancillary to the practice of law. A broad range of economic and other interests of clients may be served by lawyers participating in the delivery of these services. In recent years, however, there has been significant debate about the role the rules of professional conduct should play in regulating the degree and manner in which a lawyer participates in the delivery of nonlegal services. The ABA, for example, adopted, repealed, and then adopted a different version of ABA Model Rule 5.7. In the course of this debate, several ABA sections offered competing versions of ABA Model Rule 5.7.

One approach to the issue of nonlegal services is to try to substantively limit the type of nonlegal services a lawyer may provide to a recipient or the manner in which the services are provided. A competing approach does not try to substantively limit the lawyer's provision of nonlegal services, but instead attempts to clarify the conduct to which the Rules Regulating The Florida Bar apply and to avoid misunderstanding on the part of the recipient of the nonlegal services. This rule adopts the latter approach.