

**15. INTRODUCTION TO THE CLOSING
DISCLOSURE
PDF Supplement**

- CFPB Factsheet: TRID Title Insurance Disclosures 6/9/2020
- TRID Rating Worksheet
- “Miscellaneous Fees on the Settlement Statement” 54 *Fund Concept 1* (Jan. 2022)
- DFS Guidance Update – Title Insurance Fees (Feb. 2019)

June 9, 2020

Factsheet: TRID Title Insurance Disclosures

There are two forms of title insurance commonly purchased in a residential real estate transaction - lender's title insurance and owner's title insurance.

Lender's title insurance protects a creditor against problems with or challenges to the title to a property, such as someone with a legal claim against the home. Lender's title insurance only protects the creditor against problems with the title, and imposes a duty on the title insurance underwriter to defend the creditor's interest in the title of the property in certain title issues. This product is generally required by the creditor as part of the transaction. The cost of the lender's title policy is disclosed on the Loan Estimate and Closing Disclosure as discussed below.

Owner's title insurance is a product that protects the consumer's financial investment in the home from title issues. It indemnifies the consumer if there is a loss due to a title issue, but also requires the title insurance underwriter to defend the consumer's title to a property against litigation concerning certain title issues that may arise after purchasing the home. Some title companies may offer an "enhanced" owner's title insurance product, which provides additional coverage and may increase the amount of coverage as the property appreciates. Owner's title insurance is typically not required by the creditor as part of the transaction and is optional for the consumer to purchase. The cost of the owner's title policy is disclosed on the Loan Estimate and Closing Disclosure as discussed below.

This is a Compliance Aid issued by the Consumer Financial Protection Bureau. The Bureau published a Policy Statement on Compliance Aids, available at <https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/policy-statement-compliance-aids/>, that explains the Bureau's approach to Compliance Aids.

Disclosure on Loan Estimate and Closing Disclosure

Lender's Title Insurance

If the consumer is required to pay for the lender's title insurance, the cost of the policy is disclosed in the Closing Cost Details in the Loan Costs Table under Services You Cannot Shop For or Services You Can Shop For on the Loan Estimate, depending upon whether the creditor allows the consumer to shop for lender's title insurance. 12 CFR § 1026.37(f)(2) and (f)(3).

On the Loan Estimate, the amount disclosed by the creditor for lender's title insurance is the amount of the premium. This amount can be disclosed as "Title - Premium for Lender's Coverage," or any similar language as long as it clearly indicates the amount of the premium disclosed and that the premium is for the lender's title insurance coverage. Comment 37(f)(2)-4.

Similarly, on the Closing Disclosure, the cost of lender's title insurance is disclosed in the Loan Costs Table under either Services Borrower Did Not Shop For or Services Borrower Did Shop For, depending on whether the consumer did or did not shop for the lender's title insurance, and have a similar label. 12 CFR § 1026.38(f)(2) and (f)(3); Comments 38(f)(2)-1 and 37(f)(2)-3.

Owner's Title Insurance

In most cases, the creditor does not require the consumer to obtain owner's title insurance. If the consumer obtains owner's title insurance and the creditor does not require it, the cost of owner's title insurance is disclosed in Closing Cost Details in the Other Costs Table on the Loan Estimate and Closing Disclosure. 12 CFR §§ 1026.37(g)(4) and 38(g)(4). Generally, the amount disclosed for owner's title insurance is based on the owner's policy rate. For the Loan Estimate, the cost disclosed for the owner's title insurance policy is not based on any "enhanced" title insurance policy rate, unless the creditor knows or has reason to believe at the time the creditor is issuing the Loan Estimate that an "enhanced" owner's title insurance policy will be purchased, such as if it is required by the real estate sales contract. Comment 37(g)(4)-1.

When the consumer purchases owner's title insurance and it is not required by the creditor, this fact is noted on the Loan Estimate and Closing Disclosure through use of the term "optional". 12 CFR §§ 1026.37(g)(4)(ii) and 38(g)(4)(ii). The cost for owner's title insurance must be disclosed as "Title - Owner's Title Policy (optional)," or in any similar manner that includes the introductory description "Title -" at the beginning of the label, and include the parenthetical description "(optional)," if applicable, at the end of the label. Comments 37(g)(4)-1, -3, and 38(g)(4)-2. If the

seller pays for the owner's title insurance, the "(optional)" description is not required on the Closing Disclosure. Comment 38(g)(4)-2.

In the unlikely event that the creditor requires the consumer to obtain owner's title insurance, costs are disclosed in the same manner as costs for lender's title insurance: on the Loan Estimate under Closing Cost Details in the Loan Costs Table in Services You Cannot Shop For or Services You Can Shop For, and on the Closing Disclosure under Closing Cost Details in the Loan Costs Table in Services Borrower Did Not Shop For or Services Borrower Did Shop For, as applicable. 12 CFR §§ 1026.37(f)(2); 37(f)(3); 38(f)(2) and 38(f)(3).

Disclosure of simultaneous title insurance on the Loan Estimate and Closing Disclosure

Title companies often offer a different rate, called a "single" or "simultaneous" rate if a consumer purchases both the lender's and owner's title insurance from the same company, rather than purchasing each policy from separate companies.

The Bureau has a formula to assist lenders in disclosing the required rates consistently, in a way that does not depend on whether the consumer purchases the owner's and lender's title insurance policies individually, or obtains the policies from the same company and gets the simultaneous rate, or buys only the required lender's title insurance. If the consumer obtains only the required lender's title insurance policy, and no owner's title insurance policy, the use of this formula by the creditor is not necessary.

The premium for an owner's title insurance policy for which there is a simultaneous issuance of a lender's and an owner's policy is calculated and disclosed on the Loan Estimate and Closing Disclosure as follows:

((full owner's policy premium) + (the simultaneous premium for the lender's policy, i.e., simultaneous amount)) – (full lender's premium).

Comments 37(g)(4)-2 and 38(g)(4)-2.

The premium disclosed for the lender's title insurance policy is the full lender's premium, not the discounted, or simultaneous, rate.

Differences between state disclosures and TRID disclosure requirements for simultaneous rates

The disclosure of lender's and owner's title insurance on the TRID disclosures may differ from disclosures on state forms in some states when the consumer purchases policies from the same title insurance company and obtains a "simultaneous" rate. As stated above, when the consumer obtains a simultaneous rate, the cost disclosed on the TRID disclosures for the lender's title insurance is the full lender's premium, not the simultaneous rate. Instead, the cost of owner's title insurance is disclosed using the following formula: ((full owner's policy premium) + (the simultaneous premium for the lender's policy, i.e., simultaneous amount)) – (full lender's premium). Comments 37(g)(4)-2 and 38(g)(4)-2.

In most state disclosures, the cost disclosed for the lender's and owner's title insurance policy premiums is the simultaneous rate for the lender's title insurance policy and the full amount of the owner's title insurance policy. Because in some instances state disclosures reflect the pricing of the simultaneous rate as part of the disclosure for the policies or disclose the policies together as one cost, they may differ from the TRID disclosures which always disclose the full lender's policy premium and always disclose the pricing of each policy separately. In such cases, the owner's title insurance and lender's title insurance premiums listed on the TRID disclosures may be different from the title insurance rates quoted by title insurance agents in accordance with State law or the common practice in a particular geographic area.

Examples

For the examples below, assume lender's title insurance is required by the creditor but owner's title insurance is optional, and that the rate prices are as follows:

- **Full premium rate for lender's policy** (the amount disclosed if only lender's title insurance is purchased): \$1,175
- **Full premium rate for owner's policy** (the amount disclosed if only owner's title insurance is purchased): \$2,568
- **Simultaneous premium rate for lender's policy** (incremental cost for purchasing lender's policy (as disclosed pursuant to certain State laws), if purchased through the same company as the owner's policy): \$200

Example 1: No Owner's Title Insurance

When the consumer does not obtain owner's title insurance, the amount disclosed on the TRID disclosures for lender's title insurance is the full amount and owner's title insurance is omitted from the TRID disclosures. The amount disclosed for lender's title insurance is the same as the amount paid.

TABLE 1: TRID DISCLOSURE METHOD FOR TITLE INSURANCE PREMIUM CALCULATION WITHOUT OWNER'S POLICY

Policy	Cost	Disclosure
Full owner's policy premium (<i>not disclosed</i>)	\$ 0	---
Full lender's policy premium (<i>disclosed in Loan Costs Table</i>)	+ (plus) \$1,175	\$1,175
Total policy premium paid	\$1,175	\$1,175

Example 2: Lender's and Owner's Title Insurance, without Simultaneous Rate

When the consumer obtains lender's and owner's title insurance, but does not receive a simultaneous rate (because, for example, the two policies are purchased from different companies), the disclosure of lender's and owner's title insurance is the amount of the full policy premiums and the total for both policies is also the same as the amount paid.

TABLE 2: TRID DISCLOSURE METHOD FOR TITLE INSURANCE PREMIUM CALCULATION WITHOUT SIMULTANEOUS PREMIUM FOR THE LENDER'S POLICY

Policy	Cost	Disclosure
Full owner's policy premium (<i>disclosed in the Other Costs Table</i>)	\$2,568	\$2,568
Full lender's policy premium (<i>disclosed in the Loan Costs Table</i>)	+ (plus) \$1,175	\$1,175
Total policy premium paid	\$3,743	\$3,743

Example 3: Lender’s and Owner’s Title Insurance, with Simultaneous Rate

Assume instead that the consumer purchases both policies from the same company and obtains a “simultaneous” rate for the lender’s title insurance premium, paying \$200 for lender’s title insurance.

When the consumer obtains a simultaneous rate for the lender’s policy premium, the lender’s title insurance premium is disclosed as the full premium amount (\$1,175), and not the simultaneous rate (\$200).

For the disclosure of the owner’s title insurance, as discussed above, on the TRID disclosures, the owner’s title insurance rate disclosure is calculated using the following equation: ((full owner’s policy premium) + (the simultaneous premium for the lender’s policy (i.e., simultaneous amount)) – (full lender’s premium). In the fact pattern here, the owner’s title insurance is disclosed as:

$$((\$2,568) + (\$200)) - (\$1,175) = \mathbf{\$1,593}$$

Although the owner’s title insurance policy rate quoted by the title insurance company is \$2,568, the cost of owner’s title insurance is disclosed as \$1,593 on the TRID disclosures.

The sum of the disclosed owner’s title insurance premium and lender’s title insurance premium on the TRID disclosures is \$2,768, which is \$1,593 + \$1,175, and this is the same as the total disclosed on the state disclosures.

TABLE 3: TRID DISCLOSURE METHOD FOR TITLE INSURANCE CALCULATION WITH SIMULTANEOUS PREMIUM FOR THE LENDER’S POLICY

Policy	Cost	Disclosure
		Full owner’s policy premium
		\$2,568
		Simultaneous lender’s policy premium
		+ (plus) \$ 200
		(Subtotal)
		\$2,768
Owner’s policy premium (disclosed in the Other Costs Table)	\$2,568	Full lender’s policy premium
		- (minus) \$1,175
		<hr/>
		\$1,593
Lender’s policy premium (disclosed in the Loan Costs Table)	+ (plus) \$ 200	
		\$1,175
Total policy premium paid	\$2,768	\$2,768

As discussed above, note that when the consumer obtains both owner's and lenders' title insurance policies from the same company and is offered a simultaneous rate for lender's title insurance as a result, the amount disclosed for each individual policy on the state or title disclosures may differ from the individual policy amounts shown on the TRID disclosures.

However, while the amounts disclosed for each individual policy may differ, the total amount disclosed on the TRID disclosures for owner's and lender's title insurance is the same as the total amount paid.

Simultaneous issuance if seller agrees to pay the amount of the full owner's title insurance premium

If the purchase and sales contract between consumer and seller indicates that both lender's and owner's title insurance will be purchased from the same company and the seller will pay the full owner's policy premium rate (as opposed to a discounted rate), there may be a difference between the cost of owner's title insurance disclosed and the disclosed seller's credit. Given the disclosure formula for the owner's title insurance cost when there is a simultaneous rate for lender's title insurance, in this situation there may be excess seller's credit beyond the disclosed cost of owner's title insurance. Because the seller's credit may be in excess of the disclosed owner's title insurance cost, the disclosed amount of the seller credit left over after application to the owner's title insurance cost can be disclosed in three different ways on the Closing Disclosure:

1. Shown as a credit towards the amount of the lender's premium or any other title insurance costs for premiums or endorsements in the Loan Costs Table or Other Costs Table (12 CFR §§ 1026.38(f) and (g)); or
2. Added to and shown in aggregate with other seller credits in the Summaries of Transactions tables as a general Seller Credit (12 CFR § 1026.38(k)(2)(vii)); or
3. Disclosed as a stand-alone seller credit on another blank line in the Summaries of Transactions tables (12 CFR § 1026.38(k)(2)(viii)).

Negative Owner's Title Insurance

Generally, using the formula for disclosing simultaneous title insurance on the Loan Estimate and Closing Disclosure should not yield a negative number. When calculations yield a negative

number, the Bureau recommends checking calculations to ensure the correct owner’s rate, lender’s rate, or simultaneous rate were used.

However, in certain states the full cost of lender’s title insurance by itself could be more than the cost of both owner’s and lender’s title insurance combined, and thus, using the TRID calculation methodology, in those instances it would be correct to disclose a negative number. Comment 37(g)(4)-2

For example, assume again that lender’s title insurance is required by the creditor but owner’s title insurance is optional, and that the rate prices are as follows:

- **Full premium rate for lender’s policy** (the amount disclosed if only lender’s title insurance is purchased): \$3,175
- **Full premium rate for owner’s policy** (the amount disclosed if only owner’s title insurance is purchased): \$2,568
- **Simultaneous premium rate for lender’s policy** (incremental cost for purchasing lender’s policy, if purchased through the same company as the owner’s policy): \$200

In this example, it would be correct for the creditor to disclose a negative amount for the cost of owner’s title insurance on the TRID disclosures.

TABLE 4: TRID CLOSING DISCLOSURE METHOD FOR TITLE INSURANCE CALCULATION WITH NEGATIVE TITLE INSURANCE DISCLOSED

Policy	Cost	Disclosure
		Full owner’s policy premium \$2,568
		Simultaneous lender’s policy premium + (plus) \$ 200
		(Subtotal) \$2,768
Owner’s policy premium (disclosed in the Other Costs Table)	\$2,568	Full lender’s policy premium - (minus) \$3,175
Lender’s policy premium (disclosed in the Loan Costs Table)	+ (plus) \$ 200	\$3,175
Total policy premium paid	\$2,768	\$2,768

Again, while the amounts disclosed for each individual policy on the TRID disclosures may differ from the rates provided by the title insurance company or on state disclosures, the total amount disclosed for owner's and lender's title insurance is the same as the total amount paid.

TRID Rating Worksheet – Chopra to Black

1. Florida Rate

Purchase Price \$ 550,000.00

Promulgated Rate (Owner – O21) \$ 2,825.00

Simultaneous Rate (M21 or S21 - Loan) **+** \$ 25.00

Endorsements (M21)

ALTA 4.1 Condo/5.1 PUD \$ 25.00

ALTA 8.1 Environmental \$ 25.00

ALTA 9-06; 9.3-06 (lender's) \$ 285.00

ALTA _____ \$ _____

Total for Endorsements **+** \$ 335.00

TOTAL – Florida Rate \$ 3,185.00

~~~~~

## 2. TRID Rate – Standalone Mortgagee Policy (M21) – for CD

Amount of Loan \$ 410,000.00

Promulgated Rate \$ 2,125.00

Endorsements (M21 or S21)

ALTA 4.1 Condo/5.1 PUD \$ 25.00

ALTA 8.1 Environmental \$ 25.00

ALTA 9-06; 9.3-06 \$ 212.50

ALTA \_\_\_\_\_ \$ \_\_\_\_\_

Total for Endorsements **+** \$ 262.50

**TOTAL – TRID Rate** \$ 2,387.50

~~~~~

3. TOTAL - Florida Rate \$ 3,185.00

TOTAL - TRID Rate **■** \$ 2,387.50

Marginal Increase (For CD Owners' policy cost) **≡** \$ 797.50

~~~~~

**4. Seller paying owner's policy? - Credit due:**

**Florida Rate** \$ 2,825.00

**Marginal Increase** **■** \$ 797.50

**CREDIT DUE BORROWER in Seller Pay Title Insurance** **≡** \$ 2,027.50

## Miscellaneous Fees on the Settlement Statement

By Robert J. Rohan, Fund Regulatory Compliance Counsel

During the course of routine audits performed on every Fund Member, Fund auditors examine a representative sample of closing files and their settlement statements. The auditors often encounter, and call the Fund Member's attention to, fees prohibited by law in Florida or by the federal Real Estate Settlement Procedures Act (RESPA). This article will review and explain why these fees are problematic.

### Title Examination Fees

In the July 2010 *Fund Concept*, Norwood Gay, then Fund Sr. Vice President and Chief Legal Officer, authored "[Miscellaneous Fees Under RESPA](#)." He reported, "[a]t least one agent continues to charge a separate examination fee, which was prohibited by an amendment to the Florida Statutes in 2007."

Then and now, Sec. 627.7711(1)(b), F.S., defines "Primary title services" to mean, among other things, "determining insurability...based upon evaluation of a reasonable title search." Similarly, Sec. 627.7711(2), F.S., did and does define "Premium" to mean, among other things, "the charge for performance of primary title services."

So now, as Mr. Gay opined more than a decade ago, when title examination is separately charged, a title agent is in violation of Sec. 627.780(1), F.S. by, in effect, collecting premium other than as adopted by the commission. Furthermore, this separate charge is in violation of RESPA. Specifically, 12 CFR 1024.14(c) states "[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." When a title agent charges the promulgated premium and then adds a charge for title examination, the latter is a duplicative fee. While much has changed, the practice of charging the prohibited fee continues. A number of influences likely contribute to the continuance of this prohibited practice. For example, prior to 2008, title agents were required by Florida's then-applicable regulation to itemize the cost of title examination, and the original HUD-1 settlement statement (still frequently used in non-RESPA transactions) has a dedicated line for a title examination charge. In addition, Fund Members routinely see agents of other Underwriters itemizing this charge on their Closing Disclosures or settlement statements in current transactions. Finally, because the charge is not prohibited by either TRID or RESPA, lenders do not object when a separate title examination fee is provided to them for inclusion on a Closing Disclosure. In that regard, and in other respects as well, it seems some mistakenly believe only federal law applies to such entries. On the contrary, it is axiomatic that Florida

(Continues on page 4)



### In This Issue

- ▶ Case Reviews ..... 2
- ▶ FinCEN GTO Requirements ..... 5
- ▶ Meet Your Underwriter ..... 6
- ▶ Save The Date - Fund Assembly ..... 7
- ▶ Policy Provision Made Plain: Duty to Defend ..... 9
- ▶ 1099-S Filing Reminder ..... 11
- ▶ 2021 Title Teasers - Part III ..... 12

law controls so long as it does not contradict or limit the application of federal law.

### Compensation

It may be helpful to recall that premium is assessed against each policy and endorsement. It is also helpful to appreciate the agent's share of premium, on a percentage basis, is much more lucrative for title insurance agents in Florida than for insurance agents providing other insurance products. The reason is that title agents have a much greater responsibility in contributing to the final product, the title insurance policy, by identifying requirements and resolving relevant issues affecting title.

When rating an owner's policy one might recall Norwood Gay's familiar phrase "not a penny more nor a penny less" than the promulgated rate. The rates for simultaneous issue and some endorsements, however, are based upon promulgated minimum amounts. The rates for these products were developed in recognition of the additional work required of a title agent as well as the impact of the additional coverage on the underwriter. When one considers the additional examination and evaluation skills required to provide a Form 9 endorsement, for example, it makes sense that the minimum promulgated rate for that product is much more generous than for an endorsement where less work or skill is required.

### Document Preparation

Another item catching the attention of auditors is a separate charge for document preparation. Unlike the title examination admonition, there are no federal prohibitions; it is simply a matter of statutory interpretation as was undertaken by the Florida Department of Financial Services (DFS) when it circulated Informational Memorandum DFS-12-2007. In this memorandum, the DFS advised that in addition to title examination, neither document preparation nor notary fees could be itemized (though each also have dedicated lines on the HUD-1 settlement statement).

The basis for the 2007 DFS advisory was the then-recent enactment of Sec. 627.7711(1)(a), F.S., which defines "(c)losing services" to mean, among other things, "preparing documents necessary to close the transaction" and "conducting the closing." As the statute authorizes a separate charge for closing services distinct from the charges for premium and title search, DFS took the

position that all charges for services falling under the definition of closing services were to be included in the single settlement or closing fee entry.

### Itemizing Closing Services

Auditors also frequently encounter settlement statements with both settlement fees and itemized fees for settlement services such as courier, wire, and eRecording fees. Until recently, the DFS consistently cautioned title agents against such itemization and instructed that all such charges were to be included in the settlement fee. It did so primarily through its Compliance FAQs published on the [myfloridacfo.com](http://myfloridacfo.com) website. In one FAQ, the DFS provided the following as examples of fees that should not be listed separately: postage and handling, copies, digital documents, document storage or warehousing fees, and electronic conversion of documents to CD or DVD formats. In another FAQ, the DFS opined that eRecording fees charged by the third-party vendors "must be included in the calculation of the closing services fee that is shown on the settlement statement" since the vendors were doing so "on behalf of the title agent or agency."

In 2019, the DFS relented somewhat when it published an FAQ on [Title Insurance Agency Fees](#). For the first time, the DFS extended permission "to charge third-party fees as separate line items" provided "the consumer has been notified these fees represent (agency) responsibilities contracted to a third party." It continued to stress these fees were for closing services which must be reported as such in the annual data call filing and that "in no case should a third-party fee be charged to a consumer in a deceptive or misleading manner."

In the same FAQ one can find a checklist of items the DFS will verify as part of its audit responsibilities, including a determination the agency "(c)harged the consumer the same fees the agency advertised or told the consumer would be required to close on the property." In a compliance action last year, the DFS entered into a stipulated settlement with an agency found to have advertised a discounted settlement fee, but then added

unadvertised closing services fees to the settlement statement in the transaction.

## Conclusion

The business of providing title insurance and closing real estate transactions is extremely competitive. Since premiums are promulgated and title searches are obtained from vendors, the settlement fee is the one cost consumers typically use when shopping for a settlement provider. Quoting a settlement fee without disclosing the costs of other closing services is a form of “bait and switch” to which the DFS is committed to eliminating.

The use of the words “deceptive or misleading manner” in the FAQs, as well as in the 2007 Information Memorandum, makes it clear that DFS will rely upon Sec. 626.9541, F.S., of the Unfair Insurance Trade Practices Act to ensure compliance with the disclosure requirements outlined in the recent FAQ. Settlement agents should provide prospective customers with accurate and complete disclosures of the fees to be charged in advance of closing. If not included in a settlement fee, members should retain evidence of advance disclosure of closing services which would be separately itemized on the settlement statement. The Fund continues to believe and teach as best practice the inclusion of all such costs in a settlement fee. □

### COPYRIGHT © 2022

“The Fund” and “The Fund Concept” are registered trademarks.

### EDITORIAL BOARD

Margaret A. (Peggy) Williams, Co-Editor

Rebecca L.A. Wood, Co-Editor

Melissa S. Scaletta, VP, Chief Underwriting Counsel & Associate General Counsel

Daniel P. Lawler, Editorial Assistant

Claude J. Ouellet  
Reprographics Assistant

## FinCEN GTO

All Fund Members are required to comply with the terms of the current Geographic Targeting Order (GTO) issued by the Financial Crimes Enforcement Network of the U.S. Department of Treasury (FinCEN). View the [Current Geographic Targeting Order](#).

### Reporting Criteria

Criteria for transactions requiring reporting under the current GTO:

- Purchases of residential property;
- In Miami-Dade, Broward, or Palm Beach County;
- For \$300,000 or more;
- By a corporation, limited liability company (LLC), partnership, or other similar legal entity, except U.S. publicly traded companies or their subsidiaries;
- Without a bank loan or other similar form of institutional financing.

There is no form of payment that is exempt from reporting, but there is also no requirement to report check numbers or wire routing numbers.

Fund Members are obligated to file when reporting is triggered.

### Helpful Links:

Visit <https://www.sec.gov/edgar/searchedgar/companysearch.html> to determine whether the purchaser is a U.S. publicly traded company.

View the Educational Materials at <https://www.thefund.com/ondemand/legal-education/fin-cen-reporting-ctr>.

**TITL**

**TITLE INSURANCE THROUGH LAWYERS**

### **\*\* Reminder \*\***

If you have not sent in your contribution to Title Insurance Through Lawyers (TITL), please do so now.

## DFS Guidance Update – Title Insurance Agency Fees (Feb 2019)

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

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

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

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

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

The Florida Statutes defines "closing services" as the service provided by a licensed title insurer, title insurance agent or agency, or attorney agent in the agent's or agency's capacity as such, including, but not limited to, preparing documents necessary to close the transaction, conducting the closing, or handling the disbursing of funds related to the closing in a real estate closing transaction in which a title insurance commitment or policy is to be issued. These are activities that reduce the future liability of the title insurer by making sure the closing was conducted suitably, the correct people signed the appropriate forms, all existing liens were identified and discharged or excluded from coverage, the property was properly identified, existing loans were satisfied, and the new documents were recorded timely in the proper venue.

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

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